

ONTARIO LABOUR RELATIONS BOARD REPORTS

September/October 2010



ONTARIO LABOUR RELATIONS BOARD

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**A Bimonthly Series of Decisions from the
Ontario Labour Relations Board**

Cited [2010] OLRB REP. SEPTEMBER/OCTOBER

**EDITORS: VOY STELMASZYNSKI
LEONARD MARVY**

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SUBJECT INDEX

Apprehension of Bias – Construction Industry – Practice and Procedure – The applicant alleged an apprehension of bias in that the Vice-Chair deciding the matter (a dispute that the International violated sections 147 and/or 149) had been retained, in his personal capacity as an arbitrator, by the International (and not the Local) to determine the Carpenters ICI Collective Agreement for 2010-2013 – The Board noted that the parties to the Provincial Collective Agreement (the Carpenters' Employer Bargaining Agency and the Carpenters' District Council of Ontario [CDC]) were different from the parties before the Board (the International and Local 1256) – The Board noted that the degree of institutional impartiality and independence of the Board is well known and not challenged by the applicant – The Board found that while it may envision a situation in which the conduct of an individual may bring such impartiality and independence into question, it was not the case where a person acting as an independent adjudicator in a role that involved related but different parties and that required neutrality and credibility somehow compromises his or her independence and neutrality as a Vice-Chair – The Board concludes that an apprehension of bias was not made out – Matter continues

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; RE
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
LOCAL UNION 1256

719

Certification – Construction Industry – Related Employer – LIUNA sought to certify the employees of Mirtren Contractors Limited and shortly thereafter filed an application for relief under the related employer provision of the Act, citing also Mirtren Construction Limited and Mirtren Builders Ltd. (claim against latter company dropped) – The employees of Mirtren Contractors were represented by CLAC – Contractors asserted it had no employees in the bargaining unit sought by LIUNA – The Board found that although both Contractors and Construction were owned by one individual, they carried on business in two distinct divisions, geographically apart, with each division reporting to different management for operational and labour relations purposes – The Board dismissed the application for a declaration that the companies were related but, given there was no prejudice to Construction, was satisfied that it should invoke s. 112 to find that the responding party had been incorrectly named in the application for certification – Matters continue

MIRTREN CONTRACTORS LIMITED AND MIRTREN CONSTRUCTION
LIMITED; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL; RE
CONSTRUCTION WORKERS LOCAL 52, AFFILIATED WITH THE CHRISTIAN
LABOUR ASSOCIATION OF CANADA

644

Certification – Reconsideration – Timeliness – In its response to the application for certification the employer indicated its disagreement with both the description of the bargaining unit and the union's estimate of individuals in it; and also checked "no" in response to the question whether it was giving an 8.1 notice – One day after the two day statutory time limit expired, the employer wrote the Board saying the "no" was inadvertent and it had provided the necessary information under 8.1 – The Board found the notice untimely; one week after the vote was taken and counted the employer applied for reconsideration – The Board rejected the employer's first argument that it had complied with the Act and given notice – The Board found the "no" coupled with the employer's failure to answer the supplementary question in addition to the statutory requirement indicated to it that notice was not given – The Board also rejected the alternative argument that it should exercise its discretion to extend the notice, when it found, assuming it had such

discretion, that it would only grant relief in the most compelling circumstances, and there were none in these circumstances – Request for reconsideration denied

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SNC LAVALIN INC.; LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL

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Construction Industry – Jurisdictional Dispute – PCL subcontracted the work in dispute, the forming of walls by insulated concrete formwork (ICF), which is a relatively new building method or technology, to Elite, a subcontractor bound to a collective agreement with the Carpenters – The applicant Locals asserted that the work in dispute represented their respective traditional portion of concrete formwork in the ICI sector of the construction industry, while the responding parties asserted that virtually every aspect of the ICF construction differed from traditional concrete formwork – The Board found that the forming process reflected by ICF technology was not so markedly different than that reflected by traditional concrete forming that the wholesale rejection of area practice evidence with respect to the installation of traditional concrete forms was warranted – Accordingly, the Board found it appropriate to consider the area practice relied upon by the applicant Locals and found it overwhelmingly supported the assignment of work in dispute to the applicants – The totality of the evidence of employer practice also suggested that the applicants had a better claim to the assignment of work than did the Carpenters – After finding the other factors at best neutral, the Board was satisfied that there were compelling reasons to find in favour of the applicants notwithstanding the absence of a collective agreement relationship between each of them and Elite – The Board found the work in dispute ought to have been assigned to the applicants members

PCL CONSTRUCTORS CANADA LTD. AND ELITE BUILDING GROUP INC.; RE CARPENTERS' DISTRICT COUNCIL OF ONTARIO; RE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS, LOCAL 736

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Construction Industry Grievance – Estoppel – *Human Rights Code* – The grievance arose from the lay-off of a journeyman electrician over the age of 50 where the Principal Agreement required one in every five journeymen to be “fifty (50) years of age or older, where available” – The Board found that the respondent was not estopped from asserting the section was illegal because the respondent raised the issue in bargaining and rather than taking the issue any further, the parties simply agreed to disagree over whether it was contrary to the Code – The Board found the section required an employer to discriminate among employees with respect to their employment by reason of their age – The Board would not take administrative notice, nor was it persuaded on the evidence, that electricians aged 50 and older constituted a disadvantaged group – The Board concluded that the section at issue did not constitute a special program within the meaning of the *Code* as it found no “rational connection between any restrictions in eligibility and the purpose of the special program itself” – Accordingly, the respondent was not found to have violated the Principal Agreement – Grievance dismissed

BLACK & MCDONALD LIMITED; RE IBEW, LOCAL 353; RE THE ELECTRICAL TRADE BARGAINING AGENCY OF THE ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO; RE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS CONSTRUCTION COUNCIL OF ONTARIO

583

Construction Industry Grievance – Estoppel – The union alleged that fire restoration work performed by Jacobs Catalytic was construction work required to be performed under the Principal Agreement – The Board considered, assuming without finding the work to be construction, whether the union was estopped from enforcing the Principal Agreement – First, the Board was persuaded that the past practice evidence of fire restoration work having been performed by union members under the Maintenance Agreement constituted a representation by the union that it would not enforce the Principal Agreement – Second, the Board found no specific action or inaction taken on the part of Jacobs based on the representation – Unlike a previous case, Jacobs did not enter into a contract with Petro-Canada nor negotiate its rates with Petro-Canada based on the representation – Finally, the Board also found that Jacobs would suffer no detriment if the union were permitted to enforce the terms of the Principal Agreement – Accordingly, the union was not estopped from enforcing the Principal Agreement – Matter continues to determine whether any or all of the work is construction

JACOBS CATALYTIC LTD.; RE IBEW, LOCAL 353; THE ELECTRICAL TRADE BARGAINING AGENCY OF THE ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO AND GENERAL PRESIDENTS' MAINTENANCE COMMITTEE FOR CANADA.....

628

Duty of Fair Representation – Employment Standards – Chrysler provided notice of indefinite layoff to 1,110 employees, in the middle of which was a planned two-week shutdown of the affected part of the company – The union negotiated an opportunity for 850 of the most junior employees to earn wages for those two weeks – The more senior employees, which included the applicant, were not afforded the same opportunity but were informed the lay-off would not continue – The applicant argued he was entitled to payment for the same two week period as per the notice provisions of the *ESA* and the union's failure to seek redress for this breach as well as the work opportunity negotiated for the most junior employees violated the duty of fair representation – The Board held that the proper focus of a s.74 complaint was whether the union's conduct was arbitrary, discriminatory, or in bad faith, and not an exhaustive assessment of the *ESA* challenge – The Board found the union had appropriately balanced the interests of all members in negotiating the work opportunity – Application dismissed

GEORGE CARTER; RE NATIONAL AUTOMOBILE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 1285; RE CHRYSLER CANADA INC.

625

Duty of Fair Representation – Practice and Procedure – Unfair Labour Practice – After finding that the complainant had not made out a prima facie case, and reviewing eight previous duty of fair representation complaints, the Board found the complainant to be a vexatious litigant on the basis of the following material: he brought multiple proceedings making basically the same allegations; he consistently sought relief the Board would not conceivably grant; he made unjustifiable and unreasonable aspersions against the lawyers representing the Union and its officials and representative, and against the adjudicators and officers of the Board; for the Board to address the series of exaggerated and unsupported allegations was an abuse of public resources and an abuse of process – The applicant was declared a vexatious litigant and not permitted to file a complaint against the union or employer without leave of the Board – Application dismissed

DR. PETER A. KHAITER; RE YORK UNIVERSITY FACULTY ASSOCIATION (YUFA)

622

Duty to Bargain in Good Faith – A variety of incidents occurred during the negotiation of a renewal collective agreement between the parties: a termination application was made, but the union was able to withstand the challenge; a sizeable minority voted against the union, and the union alleged employer initiation (given the result of the vote, the allegation was not adjudicated); notice to bargain was given by the union; a conciliation officer was appointed; the employer offered to have the current and future collective agreements settled by interest arbitration; the union declined the proposal; a “no board” was issued; the employer tabled a “final offer to settle negotiations” and proposed that if the wage component remained at issue, the parties could agree on language and refer the wage issue to an interest arbitrator; the union sought clarification of one aspect of the wage issue; the employer’s clarification was not a “model of clarity”; the employer subsequently withdrew its final offer and did not re-table a fresh offer; in the meantime, the employer implemented a wage raise and at the same time advised the union it would no longer deduct and remit union dues – The Board held that the *LRA* does not mandate that unions and employers enter into a collective agreement, only that they make every effort to do so, and bargain in good faith in the process – These obligations continue beyond the expiry of the statutory freeze, where there may be a strike or lock-out, and even after a legal strike or lock-out has actually commenced – The Board found the employer violated s. 17 when it failed to state its wage proposal clearly and when it withdrew its offer without warning and without re-tabling an offer that the union could address – Application allowed: employer ordered to re-table offer and, if offer is accepted, to reinstate dues deductions

BOLDRICK BUS SERVICES LTD.; RE TEAMSTERS LOCAL UNION 91

605

Duty to Bargain in Good Faith – Unfair Labour Practice – During bargaining for a renewal collective agreement, OPSEU sought the names and telephone numbers of all its members from the employer – The employer resisted, relying on a provision in the parties’ collective agreement that limited disclosure of employees’ contact information to once per year, and exempted those employees who objected to having their contact information given to the union – OPSEU alleged the employer was bargaining in bad faith and interfering with the union’s statutory right to represent its members; it was not specifically relying on the alleged breach of the collective agreement – The Board found the employer has a positive obligation to provide the information to the union to facilitate equal bargaining positions in the collective bargaining relationship – The union’s request for the information was made in the context of giving notice to bargain a new collective agreement – The employer’s refusal to furnish the information was an interference with the union’s administration of its bargaining rights – Application allowed

OAKLANDS REGIONAL CENTRE; RE OPSEU

658

Employment Standards – Duty of Fair Representation – Chrysler provided notice of indefinite layoff to 1,110 employees, in the middle of which was a planned two-week shutdown of the affected part of the company – The union negotiated an opportunity for 850 of the most junior employees to earn wages for those two weeks – The more senior employees, which included the applicant, were not afforded the same opportunity but were informed the lay-off would not continue – The applicant argued he was entitled to payment for the same two week period as per the notice provisions of the *ESA* and the union’s failure to seek redress for this breach as well as the work opportunity negotiated for the most junior employees violated the duty of fair representation – The Board held that the proper focus of a s.74 complaint was whether the union’s conduct was arbitrary, discriminatory, or in bad faith, and not an exhaustive assessment of the *ESA* challenge – The Board found the

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SNC LAVALIN INC.; LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL

697

Sale of a Business – Union Successor Rights – BFI purchased York Disposal, and merged operations, intermingling employees and overlapping the scope clauses of the two bargaining units of the same union – The employer applied under s.69(6) to terminate the York bargaining rights so its existing collective agreement with BFI could apply to all employees – The union challenged the application, arguing that s.69 operates to preserve and protect bargaining rights and the expiry of the York collective agreement precluded any order under s.69(6)(a-d); further, the application of s.69(6) is restricted to different, competing bargaining agents – The Board rejected both arguments, holding that s.69(6) applied even though the same union represented both groups of employees – The Board held that s.69 must be read in its entirety; while an order under s.69(6)(a) may not be available, the Board retained the authority to grant a remedy pursuant to s.69(6)(b)-(d) – Further, the Board noted that while the intent of s.69 is to preserve and protect bargaining rights, s.69(6) operates despite these protective provisions in order to resolve the labour relations issues caused by intermingling following a sale – The Board exercised its discretion to grant the order sought

BFI CANADA INC; RE TEAMSTERS LOCAL UNION NO. 419

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Standing – Unfair Labour Practice – Milk and Bread Drivers Local 647 and Bakery, Confectionary Local 264 each had collective agreements with Canada Bread at different locations – Local 647 claimed that a collective agreement entered into between Canada Bread and Local 264 was void because it was spawned following the early termination of an existing agreement, and notice of the early termination had not been properly posted – Local 647 argued that the employer had effectively “chosen” 264 over 647 to be the bargaining agent of a new facility it was planning to open – The applicant also argued that the new agreement gave Local 264 bargaining rights beyond the geographic scope of any rights it actually held – Finally, Local 647 submitted that its own collective agreement with one of Canada Bread’s facilities provided that its employees would be offered jobs at the new facility – The Board held that Local 647 had no standing to challenge the early termination: Local 647 was not affected in any way by it and only an employee in Local 264’s bargaining unit could claim the improper posting – There were several possible consequences of the new collective agreement between Local 264 that

could affect the employees represented by Local 647, but since the new facility had not opened and there were no employees currently working there, those consequences were speculative – The applicant had no standing to bring these challenges – Application dismissed

CANADA BREAD COMPANY, LIMITED AND BAKERY, CONFECTIONERY, TOBACCO WORKERS AND GRAIN MILLERS INTERNATIONAL UNION AFL-CIO, CLC, LOCAL 264; RE MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION 647 616

Timeliness – Certification – Reconsideration – In its response to the application for certification the employer indicated its disagreement with both the description of the bargaining unit and the union's estimate of individuals in it; and also checked "no" in response to the question whether it was giving an 8.1 notice – One day after the two day statutory time limit expired, the employer wrote the Board saying the "no" was inadvertent and it had provided the necessary information under 8.1 – The Board found the notice untimely; one week after the vote was taken and counted the employer applied for reconsideration – The Board rejected the employer's first argument that it had complied with the Act and given notice – The Board found the "no" coupled with the employer's failure to answer the supplementary question in addition to the statutory requirement indicated to it that notice was not given – The Board also rejected the alternative argument that it should exercise its discretion to extend the notice, when it found, assuming it had such discretion, that it would only grant relief in the most compelling circumstances, and there were none in these circumstances – Request for reconsideration denied

THE CORPORATION OF THE TOWN OF TECUMSEH; RE CUPE..... 713

Unfair Labour Practice – Duty of Fair Representation – Practice and Procedure – After finding that the complainant had not made out a prima facie case, and reviewing eight previous duty of fair representation complaints, the Board found the complainant to be a vexatious litigant on the basis of the following material: he brought multiple proceedings making basically the same allegations; he consistently sought relief the Board would not conceivably grant; he made unjustifiable and unreasonable aspersions against the lawyers representing the Union and its officials and representative, and against the adjudicators and officers of the Board; for the Board to address the series of exaggerated and unsupported allegations was an abuse of public resources and an abuse of process – The applicant was declared a vexatious litigant and not permitted to file a complaint against the union or employer without leave of the Board – Application dismissed

DR. PETER A. KHAITER; RE YORK UNIVERSITY FACULTY ASSOCIATION (YUFA) 622

Unfair Labour Practice – Duty to Bargain in Good Faith – During bargaining for a renewal collective agreement, OPSEU sought the names and telephone numbers of all its members from the employer – The employer resisted, relying on a provision in the parties' collective agreement that limited disclosure of employees' contact information to once per year, and exempted those employees who objected to having their contact information given to the union – OPSEU alleged the employer was bargaining in bad faith and interfering with the union's statutory right to represent its members; it was not specifically relying on the alleged breach of the collective agreement – The Board found the employer has a positive obligation to provide the information to the union to facilitate equal bargaining positions in the collective bargaining relationship – The union's request for the information was made in the context of giving notice to bargain a new collective

agreement – The employer's refusal to furnish the information was an interference with the union's administration of its bargaining rights – Application allowed

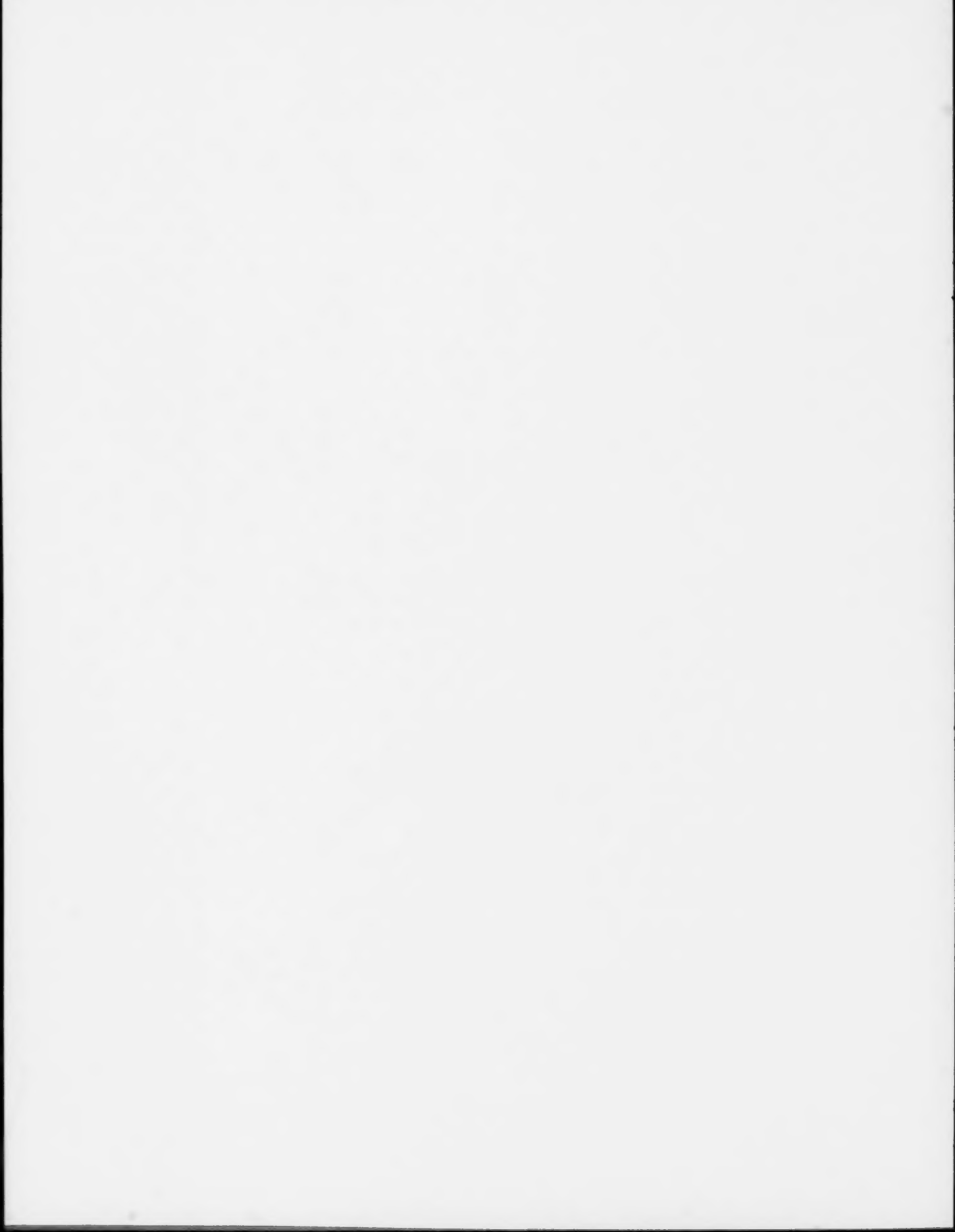
OAKLANDS REGIONAL CENTRE; RE OPSEU 658

Unfair Labour Practice – Standing – Milk and Bread Drivers Local 647 and Bakery, Confectionary Local 264 each had collective agreements with Canada Bread at different locations – Local 647 claimed that a collective agreement entered into between Canada Bread and Local 264 was void because it was spawned following the early termination of an existing agreement, and notice of the early termination had not been properly posted – Local 647 argued that the employer had effectively “chosen” 264 over 647 to be the bargaining agent of a new facility it was planning to open – The applicant also argued that the new agreement gave Local 264 bargaining rights beyond the geographic scope of any rights it actually held – Finally, Local 647 submitted that its own collective agreement with one of Canada Bread's facilities provided that its employees would be offered jobs at the new facility – The Board held that Local 647 had no standing to challenge the early termination: Local 647 was not affected in any way by it and only an employee in Local 264's bargaining unit could claim the improper posting – There were several possible consequences of the new collective agreement between Local 264 that could affect the employees represented by Local 647, but since the new facility had not opened and there were no employees currently working there, those consequences were speculative – The applicant had no standing to bring these challenges – Application dismissed

CANADA BREAD COMPANY, LIMITED AND BAKERY, CONFECTIONERY, TOBACCO WORKERS AND GRAIN MILLERS INTERNATIONAL UNION AFL-CIO, CLC, LOCAL 264; RE MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION 647 616

Union Successor Rights – Sale of a Business – BFI purchased York Disposal, and merged operations, intermingling employees and overlapping the scope clauses of the two bargaining units of the same union – The employer applied under s.69(6) to terminate the York bargaining rights so its existing collective agreement with BFI could apply to all employees – The union challenged the application, arguing that s.69 operates to preserve and protect bargaining rights and the expiry of the York collective agreement precluded any order under s.69(6)(a-d); further, the application of s.69(6) is restricted to different, competing bargaining agents – The Board rejected both arguments, holding that s.69(6) applied even though the same union represented both groups of employees – The Board held that s.69 must be read in its entirety: while an order under s.69(6)(a) may not be available, the Board retained the authority to grant a remedy pursuant to s.69(6)(b)-(d) – Further, the Board noted that while the intent of s.69 is to preserve and protect bargaining rights, s.69(6) operates despite these protective provisions in order to resolve the labour relations issues caused by intermingling following a sale – The Board exercised its discretion to grant the order sought

BFI CANADA INC; RE TEAMSTERS LOCAL UNION NO. 419 594



0069-07-G International Brotherhood of Electrical Workers, Local 353, Applicant v. **Black & McDonald Limited**, Responding Party v. The Electrical Trade Bargaining Agency of the Electrical Contractors Association of Ontario, Intervenor No. 1 v. International Brotherhood of Electrical Workers Construction Council of Ontario, Intervenor No. 2

Construction Industry Grievance – Estoppel – Human Rights Code – The grievance arose from the lay-off of a journeyman electrician over the age of 50 where the Principal Agreement required one in every five journeymen to be “fifty (50) years of age or older, where available” – The Board found that the respondent was not estopped from asserting the section was illegal because the respondent raised the issue in bargaining and rather than taking the issue any further, the parties simply agreed to disagree over whether it was contrary to the Code – The Board found the section required an employer to discriminate among employees with respect to their employment by reason of their age – The Board would not take administrative notice, nor was it persuaded on the evidence, that electricians aged 50 and older constituted a disadvantaged group – The Board concluded that the section at issue did not constitute a special program within the meaning of the Code as it found no “rational connection between any restrictions in eligibility and the purpose of the special program itself” – Accordingly, the respondent was not found to have violated the Principal Agreement – Grievance dismissed

BEFORE: *Harry Freedman*, Vice-Chair and Board Members *John Tomlinson* and *Alan Haward*.

APPEARANCES: *Elizabeth M. Mitchell*, *John Chapman* and *Perry Speranza* for the applicant; *Scott Thompson*, *Nadine Dostrovsky* and *John Higginson* for the responding party; *Scott Thompson*, *Nadine Dostrovsky*, *Eryl Roberts* and *Bob O'Donnell* for Intervenor No. 1; *Elizabeth M. Mitchell* and *John Pender* for Intervenor No. 2.

DECISION OF THE BOARD; October 8, 2010

1. This grievance referral to the Board for determination under section 133 of the *Labour Relations Act*, 1995, S. O. 1995, c. 1, as am. (the “Act”) arises from the layoff of a journeyman electrician (the “Grievor”) who at the time of the layoff was over 50 years of age. The applicant contends the layoff violated section 706 of the Principal Agreement between the two intervenors (the “Principal Agreement”) by which both the applicant and responding party are bound.

2. Section 706 of the Principal Agreement provides:

Where five (5) or more Journeymen are employed, every fifth (5th)
Journeyman shall be fifty (50) years of age or older, where available.

The responding party, as one of its defences to the grievance, asserted in a motion to dismiss the grievance that section 706 is illegal because it is contrary to the *Human Rights Code*, R.S.O. 1990, c. H. 19 as am. (the “Code”) by expressly discriminating among employees in respect of their employment because of their age. The responding party also had claimed not only was section 706 contrary to the Code and therefore void, the applicant had failed to assert a *prima facie* case and finally, section 706 was not violated when the Grievor was laid off.

3. The applicant in response to the preliminary motion asserting section 706 was void because it was contrary to the Code submitted section 706 is not discriminatory within the meaning of the Code and even if it was discriminatory, that provision provides a benefit to a disadvantaged group, namely construction tradespeople 50 years of age and older and is permitted by section 14(1) of the Code as a special program for that disadvantaged group. The applicant also argued the responding party is estopped from raising the alleged illegality of section 706 because of its conduct during collective bargaining and because it does not have status to assert discrimination on behalf of its employees.

4. The applicant quite properly acknowledged from the outset that section 706 distinguishes between employees on the basis of their age by giving those individuals 50 years of age and older a preference in respect of maintaining employment with their employer. There can be no doubt when an employer bound by the Principal Agreement is reducing its workforce of journeymen electricians, those employees 50 years of age and older have greater protection from layoff because of their age when compared with journeymen electricians under the age of 50. The applicant asserts despite it giving a preference to workers based on their age section 706 is not discriminatory within the meaning of the Code, but even if it is, the provision is not contrary to the Code because it benefits a disadvantaged group and is explicitly permitted by section 14 of the Code.

5. The estoppel issue raised by the applicant as a defence to the preliminary motion made by the responding party can be dealt with succinctly. In respect of the estoppel argument based on what took place during collective bargaining, the agreed statement of fact filed by the parties stated at paragraphs 6 and 7:

The language of article 706 has not changed since it was initially negotiated as article 704 in the first province-wide Principal Agreement between the parties, which was effective from May 5, 1978 until April 30, 1980.

During the recent negotiations for the renewal of the Principal Agreement the ETBA [intervenor no. 1] took the position that article 706 should be deleted from the Principal Agreement because it is inconsistent with and contravenes the Ontario Human Rights Code. The IBEW-CCO [intervenor no. 2] rejected this proposal and as a consequence article 706 remains in the Principal Agreement.

The Board also heard testimony about the parties' collective bargaining from John Pender, the executive secretary treasurer of intervenor no. 2, the applicant's bargaining agent. Mr. Pender was involved in the last round of bargaining. He testified that section 706 has been in the Principal Agreement since 1978. He said there were two attempts by intervenor no. 1 to have it eliminated over that time, once in the late 1990's and once again in the last round of bargaining in 2007. Both attempts were unsuccessful. Mr. Pender also said a proposal had been made by his side of the table to lower the ratio which was also not accepted. In cross-examination he acknowledged the employer side had taken the position in bargaining that section 706 was illegal because it was contrary to the Code and should be removed. Mr. Pender could not recall there being a suggestion from the employer side during bargaining that they would consider language requiring them to abide by the Code. He did say he remembered taking the position that as far as he was concerned, there was a clause in the agreement that was legal and there was no reason to remove it. Mr.

Pender also made it clear in his cross-examination that the union side was not prepared to consider any changes to the language of section 706.

6. The position taken by the employer in bargaining was section 706 was illegal and the union side was aware of that. There was nothing in the evidence before us to suggest either side either explicitly or implicitly agreed with the other's view of the legality of that section. The position taken by intervenor no. 2 that it would not consider any changes to section 706 of the Principal Agreement in negotiations suggests to us there was no detrimental reliance by the applicant when the employer side did not pursue the issue any further in bargaining. Simply put, the legality of the clause was raised in bargaining by the employer side. The union side took the position it was legal and would not change the language and neither side wished to take that issue any further. In other words, status quo continued and it appears to us the parties in bargaining simply agreed to disagree over whether section 706 was contrary to the Code.

7. We also do not accept the applicant's assertion the responding party does not have status to raise the alleged illegality of section 706 as a defence because it is not affected by the discrimination and cannot assert discrimination on behalf of its younger employees. The responding party is not seeking redress for discrimination. Rather it is asserting the provision is contrary to the Code because it requires an employer bound by the Principal Agreement to discriminate between employees with respect to their employment because of their age.

8. The responding party is bound to the Principal Agreement which contains what it says is a provision that violates the Code. In our view, the responding party is not asserting a right for unnamed third parties but rather is raising a legal defence to a claim that it violated that section of the Principal Agreement. We believe the responding party has standing to assert section 706 is illegal because complying with it would cause the responding party to infringe an individual employee's rights under the Code if in selecting which of two employees were to be laid off, it chose to lay off an employee only because he or she was under 50 years so that it would maintain the employment of another employee who was 50 years of age or over. (See sections 5(1) and 9 of the Code). Therefore, we are prepared to consider the arguments made by the responding party concerning the legality of section 706 of the Principal Agreement. We find the responding party has standing to make the argument and the applicant has failed to establish the responding party is estopped from asserting section 706 is void because it is contrary to the Code.

9. Before the Board considers whether section 706 is a special program to benefit a disadvantaged group the Board must first determine whether section 706 requires an employer to discriminate against its employees by reason of their age contrary to section 5 of the Code. Section 5(1) of the Code provides:

Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or disability.

Section 5(1) of the Code establishes that every person "has a right to equal treatment with respect to employment without discrimination because of...age". Section 9 of the Code provides:

No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part.

In addition, regard must be had to the relevant definitions in section 10(1) of the Code. Section 10(1) provides in part:

In Part I and in this Part,

“age” means an age that is 18 years or more;

“equal” means subject to all requirements, qualifications and considerations that are not a prohibited ground of discrimination;

In our view, section 15 of the Code is also relevant to this issue. Section 15 provides:

A right under Part I to non-discrimination because of age is not infringed where an age of sixty-five years or over is a requirement, qualification or consideration for preferential treatment.

Section 5 is in Part I of the Code. Therefore the definitions of “age” and “equal” in section 10 apply to the interpretation of sections 5 and 15.

10. The applicant contends the preference given to journeymen electricians who are 50 years of age or older is not discriminatory within the meaning of the Code. It submits there are legitimate and acceptable reasons for that provision which is designed to assist older employees to maintain their employment. The applicant submits when interpreting the Code it is necessary to look at the overall objective the differential treatment is designed to achieve. In this case, the applicant submits there can be no doubt section 706 of the Principal Agreement attempts to address the disadvantages older workers in the construction industry face in trying to maintain their employment in that industry.

11. The applicant’s argument relies to some degree on the Board taking administrative notice that journeymen electricians who are 50 years of age and older are subject to losing their employment based, at least in part, because of their age. It says section 706, by providing a benefit or preference to certain workers because of their age is nevertheless not contrary to section 5(1) of the Code because there is a *bona fide* laudable purpose for that differential treatment.

12. That argument was accepted by the Board in *Gilmar Electric Inc.*, [1990] OLRB Rep. Jan. 20. The Board in that case dismissed the argument of an employer in a certification application that an affiliated bargaining agent bound by the Principal Agreement could not be certified because the Principal Agreement contained provisions that were contrary to the Code. The employer in that case relied on what is now section 15 of the Act.

13. In *Gilmar Electric Inc.*, the Board held that what is now section 706 of the Principal Agreement was not contrary to the Code. In doing so the Board wrote at page 24:

13. ... In our view, these provisions of the collective agreement do not discriminate against any person because of any ground of discrimination prohibited by the Code, within the meaning of sections 13 and 48(1)(b) of the Act. We agree with and adopt the decision of the Supreme Court of Canada in *Andrews v. Law Society of British Columbia*, (1989), 56 D.L.R. (4th) 1

(S.C.C.) that not every distinction or differentiation between the treatment of groups or individuals amounts to "discrimination"

14. In our view, the words "discriminate" and "discrimination" contain their own inherent limits. As stated in *Andrews*, *supra* and certainly in the context of sections 13 [now 15] and 48(1)(b) of the Act, we must also look to whether there is a discriminatory effect as a result of these provisions.

15. The effect of the impugned provisions of the collective agreement are to provide some accommodation, security, recognition and assistance to those members of the trade who have spent many of their years employed in the trade. The purpose and effect of the provisions are not motivated by any malice or based on any invidious reasons. Indeed, the purpose and effect of the provisions are reasonable and laudable and were negotiated for sound, cogent labour relations and proper purposes. There is no evidence to suggest that the provisions have caused any adverse or improper effects. We note parenthetically that it is the respondent employer and not any individual employee complaining that these provisions of the collective agreement are discriminatory.

16. Finally, we note that the provisions have been in existence for many years and appear to be well accepted, not only by the trade union but equally by the designated employer bargaining agency with whom the trade union negotiates.

14. The Board's reliance on the analysis adopted by the Supreme Court of Canada in *Andrews* did not indicate it had considered that the Court in that case was dealing with the interpretation of section 15(1) of the *Canadian Charter of Rights and Freedoms* [Part I of the *Constitution Act, 1982*, (*Canada Act 1982*, U.K. 1982, c. 11, Schedule B)] (the "Charter") where both sections 1 and 15(2) of the Charter had an impact on the discrimination analysis developed by that Court. In our view, different considerations apply to the proper interpretation of the Code.

15. It seems to us that to interpret the words "discriminate" and "discrimination" as having their own inherent limits would require the Board to ignore the normal and ordinary meaning of those words. The Code itself recognizes that conduct which is "discriminatory" on the basis of a prohibited ground is not necessarily contrary to the Code. The Code in section 14 specifically accepts that certain kinds of conduct which would otherwise be discriminatory are nevertheless permitted if they are a "special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under Part I." In addition, sections 11 and 17 of the Code establish that certain limits do exist when assessing whether conduct that might appear to infringe a right in Part I through the concepts of reasonable and *bona fide* requirements or qualifications and by providing the Code is not violated when an individual is unable to perform or fulfill the essential duties or requirements associated with the exercise of the right with reasonable accommodation. And finally, in relation to the specific issue of age discrimination, regard must be had to section 15 of the Code which clearly demonstrates the legislature's acceptance that preferential treatment on the basis of age, when that age is 65 years or more, while discriminatory, does not infringe an individual's rights under the Code.

16. In our view, section 706 clearly requires an employer to consider whether a journeyman electrician is 50 years of age or older when determining whether that employee can

remain at work when there is a layoff. Since that clause provides for preferential treatment on the basis of age the journeymen electricians covered by the Principal Agreement do not receive equal treatment with respect to employment without discrimination. Moreover, an employer bound by the Principal Agreement, in order to comply with the Principal Agreement, would directly infringe a right set out in section 5 of the Code and therefore be acting contrary to section 9 when it used a journeyman's age to determine who would be laid off and who would be retained in employment.

17. We therefore find, before considering whether section 706 of the Principal Agreement is saved by section 14 of the Code, section 706 requires an employer bound by the Principal Agreement to discriminate among employees with respect to their employment by reason of their age.

18. The applicant submits section 706 of the Principal Agreement, because it benefits construction industry workers 50 years of age and older, is permitted by section 14 of the Code. The applicant contends section 706 exists to assist or relieve the hardship or economic disadvantage faced by that group. The applicant argued the Board should take administrative notice of the fact persons 50 years of age and older face significant difficulties in obtaining and remaining employed, particularly in the construction industry. The applicant relies on the following statement of the Supreme Court of Canada in *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497 in which the Court at paragraph 101 wrote:

It seems to me that the increasing difficulty with which one can find and maintain employment as one grows older is a matter of which a court may appropriately take judicial notice. Indeed, this Court has often recognized age as a factor in the context of labour force attachment and detachment. For example, writing for the majority in *McKinney, supra*, [McKinney v. University of Guelph, [1990] 3 S.C.R. 229] La Forest J. stated as follows, at p. 299:

Barring specific skills, it is generally known that persons over 45 have more difficulty finding work than others. They do not have the flexibility of the young, a disadvantage often accentuated by the fact that the latter are frequently more recently trained in the more modern skills.

Similar thoughts were expressed in *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986, at pp. 998-99, per Iacobucci J., and at pp. 1008-09, per McLachlin J., regarding the relevance of increased age to a determination of what constitutes reasonable notice of employment termination.

19. The responding party disputed the applicant's attempt to have the Board take administrative notice journeymen electricians 50 years of age and older, in the context of a collective agreement with a hiring hall, face the same sort of obstacles to obtaining and maintaining employment the Court suggested exist for older persons. The responding party argued construction industry collective agreements containing hiring hall and apprenticeship provisions together with the fact that electrician journeymen are highly trained and skilled tradespeople all have to be considered when assessing whether the Board should take administrative notice of a fact which it disputes.

20. The applicant, in the alternative to its argument about the Board taking administrative notice of the facts on which it wished to rely, filed detailed statistical evidence to prove journeymen electricians 50 years of age and over face real obstacles in maintaining employment and require the contractual preference provided by section 706 to address the disadvantages they suffer due to their age. The applicant provided statistical evidence about the paid hours of members of Local 353 to show that those journeymen electricians over the age of 50 had approximately two to three weeks less work per year than those under age 50 in order to prove those electricians who are the beneficiaries of section 706 are a disadvantaged group. The applicant also provided evidence that newly organized employers had employed far fewer electricians who were 50 years of age or older compared to employers who have been bound by the Principal Agreement for many years.

21. The responding party disagreed with the conclusions the applicant asked the Board to draw from the evidence of the hours paid relied on by the applicant. The responding party argues the evidence relating to the newly organized employers does not demonstrate that older electricians who are members of Local 353 and work for contractors bound by the Principal Agreement have difficulty in getting work and remaining at work without the benefit of a provision like section 706.

22. The responding party points out the unorganized contractors do not participate in a joint apprenticeship program and without a hiring hall must hire employees "from the street". While unorganized employers may not be employing many electricians 50 years of age and over, it contends the non-union sector of the construction industry has no bearing on whether the employees of contractors bound by the Principal Agreement who are 50 years of age and older constitute a disadvantaged group. First, those contractors obtain employees through a hiring hall and are involved in a joint apprenticeship program. Secondly, the responding party, relying on another report prepared by Toronto Electrical Industry Benefit Administrative Services Ltd. ("TEIBAS"), points out that the distribution of work between apprentices 50 years of age and older and apprentices under 50 years of age is relatively equal, suggesting that age is not a factor when it comes to employing electricians. (Section 706 of the Principal Agreement only applies to journeymen. Apprentices 50 years of age and older do not benefit from section 706.) It argues the distribution of work among apprentices shows age is not a relevant factor in an employer's determination of whom it will employ and to whom it will assign work. Thirdly, the responding party points out statistical evidence relied on by the applicant is not hours worked but hours paid, which includes overtime hours. It suggests journeymen electricians 50 years of age and older may be more reluctant to accept overtime assignments and may take more vacation time than younger journeymen. Finally, the responding party argues the statistical difference between the hours paid of journeymen electricians over and under 50 years of age is not particularly material, especially when compared to the distribution of hours among apprentices.

23. The responding party also argued taking judicial notice that older journeymen electricians are a disadvantaged group would simply reinforce the applicant's stereotyping of older workers generally. It contends older experienced journeymen electricians are often valued by employers for their reliability, skill and knowledge. Moreover, it argues the statistical report provided by TEIBAS clearly shows the average number of hours paid to apprentices who are 50 years of age and older compared with those under 50 years of age employed by contractors bound by the Principal Agreement are relatively equal.

24. The statistical evidence contained in the TEIBAS report provided the following information about hours worked by apprentices:

Average Number of Hours Paid to Apprentices Per Capita

YEAR	AVG. HRS 50 and over	AVG HRS under 50
2003	1479.14	1475.22
2004	1446.60	1435.95
2005	1476.50	1450.21
2006	1549.57	1489.04
2007	1449.81	1393.35

The TEIBAS statistical report for that same period for journeymen showed a different pattern of hours worked for journeymen who do get the benefit of section 706 of the Principal Agreement:

Average Number of Hours Paid to Journeymen Per Capita

YEAR	AVG. HRS 50 and over	AVG HRS under 50
2003	1823.14	1887.05
2004	1601.17	1767.36
2005	1696.50	1803.53
2006	1702.40	1840.74
2007	1609.31	1692.50

The difference between the paid hours of journeymen who are 50 years of age and older and those who are under 50 over the five year period ranged from approximately 64 hours in 2003 to 166 hours in 2005. Over that five year period the average difference in the paid hours of a journeyman electrician 50 years of age and over compared with a journeyman electrician under 50 years of age was approximately 112 hours a year.

25. While the difference in the average hours worked by the two categories of journeymen electricians is significant, we remain uncertain whether that difference can be ascribed to systemic age discrimination as the applicant suggests in view of the opposite result in respect of apprentice electricians. Moreover, since section 706 of the Principal Agreement does not apply to apprentices and there is nothing the parties pointed to that suggested there was some other reason compelling contractors to employ apprentices who are 50 years of age or older rather than apprentices who are under 50, we are simply not satisfied a journeyman's age has a material impact on that individual's employment with contractors bound by the Principal Agreement.

26. We are sensitive to the concerns expressed by the applicant about seeking to protect older construction workers. The responding party argues the applicant's position is based on assumptions and stereotypes about older construction workers and their employers. The responding party submits the applicant's argument in essence is that experienced, skilled and productive journeymen electricians who happen to be 50 years of age and older require some protection from lay off simply because of their age.

27. The Board is not prepared to perpetuate that stereotype. In that regard, we refer to the following passage from the Policy on Discrimination Against Older Persons Because of Age issued by the Ontario Human Rights Commission at section 5 – Employment:

Assumptions and stereotypes about older workers are unfortunately all too prevalent in our workplaces. Older workers are often unfairly perceived as less productive, less committed to their jobs, not dynamic or innovative, unreceptive to change, unable to be trained or costly to the organization due to health problems and higher salaries. These ideas about older workers are simply myths that are not borne out by evidence. In fact, there is significant evidence that older workers:

- are highly-productive, offering considerable on-the-job experience;
- do as well or better than younger workers on creativity, flexibility, information processing, accident rates, absenteeism and turnover;
- can learn as well as younger workers with appropriate training methods and environments;
- do not fear change but rather fear discrimination.

Aging is a highly individual experience and it is not possible to generalize about the skills and abilities of a person based on his or her chronological age, any more than it is possible to make assumptions about someone based on any *Code* ground.

As a general principle, older workers should be treated as individuals, assessed on their own merits instead of presumed group characteristics and offered the same opportunities as everyone else in hiring, training and promotion. They should be subjected to the same performance management practices as every other worker. *Age, including assumptions based on stereotypes about age, should not be a factor in decisions about lay-off or termination.* [emphasis added]

28. We are not prepared to take administrative notice that journeymen electricians 50 years of age and older who are employed by contractors bound by the Principal Agreement are a disadvantaged group, nor are we persuaded to make that finding based on the evidence presented.

29. In any event, we are not persuaded section 706 of the Principal Agreement constitutes a special program within the meaning of section 14(1) of the Code. Section 14 of the Code provides, in part:

- (1) A right under Part I is not infringed by the implementation of a special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under Part I.
- (2) A person may apply to the Commission for a designation of a program as a special program for the purposes of subsection (1).

- (8) In a proceeding,
- (a) evidence that a program has been designated as a special program under this section is proof, in the absence of evidence to the contrary, that the program is a special program for the purposes of subsection (1); and
 - (b) evidence that the Commission has considered and refused to designate a program as a special program under this section is proof, in the absence of evidence to the contrary, that the program is not a special program for the purposes of subsection (1).
- (10) For the purposes of a proceeding before the Tribunal, the Tribunal may make a finding that a program meets the requirements of a special program under subsection (1), even though the program has not been designated as a special program by the Commission under this section, subject to clause (8) (b).

The applicant did not suggest that section 706 of the Principal Agreement had ever been submitted to the Ontario Human Rights Commission for designation as a special program. The applicant relies on section 14(1) of the Code and asks the Board to exercise the power under section 48(12)(j) of the Act to make a determination as if the Board was the Human Rights Tribunal of Ontario acting pursuant to section 14(10) of the Code.

30. The applicant referred to *Broadley v. Steel Company of Canada, Inc.*, (1992), 15 C.H.R.R. D/408 in which a Board of Inquiry determined that a provision in the Stelco collective agreement conferring an extended vacation entitlement on some employees but denying it to other employees because of their age was a special program within the meaning of what is now section 14 of the Code. The Code at the time the *Broadley* case was determined permitted the Commission to inquire into whether the collective agreement provision in issue met the requirements of what is now section 14 of the Code to be considered a special program "upon a complaint in respect of which the protection of subsection 1 is claimed". In other words, it was open to a responding party to a complaint under the Code alleging age discrimination to assert as a defence that its discriminatory action was permitted because it was a special program within the meaning of section 14 of the Code.

31. The applicant contends it was not necessary to apply to the Commission for a designation that section 706 constitutes a special program. Rather, it submits the Board in this proceeding is capable of making that determination and should find section 706 constitutes a special program within the meaning of section 14 of the Code.

32. Although the Board is not the Human Rights Tribunal of Ontario, it does have the jurisdiction to interpret and apply the Code pursuant to section 48(12)(j) of the Act and in the course of doing so may determine, by applying section 14(10) of the Code, whether section 706 is a special program within the meaning of section 14(1).

33. The Commission has developed policy guidelines to assist the parties in developing programs that meet the requirements of section 14(1) of the Code. In our view, those policy guidelines provide some indication of what conditions a program must meet in order to be designated by the Commission as a special program and are, for that reason, a relevant

consideration when determining whether a program, policy or contractual provision is a special program within the meaning of section 14(1). It appears to us section 706 of the Principal Agreement may well be lacking in that regard. If section 706 would not satisfy the Commission's guidelines for designation as a special program we believe the Board should be reluctant to find it is.

34. In order to be a special program section 706 must be "designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights." In making that determination, it is, in our view, important to appreciate the applicant is asserting section 706 of the Principal Agreement constitutes the entirety of the special program.

35. There is no dispute that section 706 only applies when employers are determining which journeymen will be laid off. Section 706 does not require the applicant to provide any preference to journeymen 50 years of age and older when it dispatches journeymen from the hiring hall. In other words, journeymen electricians are dispatched from the hiring hall without regard to their age, but when an employer is reducing the number of journeymen electricians in its employ, it must have regard to the age of its journeymen when determining who will be laid off.

36. The Commission's Guidelines on Special Programs that were in effect at the time the grievance was filed have some bearing on our determination. Section 6 of the Guidelines is titled What Should Special Programs Look Like. Section 6.1 which deals with eligibility criteria states, in part:

Care should be taken to ensure that the program does not unreasonably restrict who will benefit, especially when the restrictions might be considered to be "discriminatory" under the *Code*. There should be a rational connection between any restrictions in eligibility and the purpose of the special program itself.

We observe in that regard that the section 706 does not apply to apprentices 50 years of age and older. We also note no explanation was provided for selecting 50 years of age as the demarcation for the group who benefit from that provision. Restricting the benefit to persons 50 years of age and older appears, in the absence of an explanation, to be a restriction based solely on age, which is a prohibited ground. Moreover, section 706 is not a consideration when journeymen are dispatched through the hiring hall.

37. We accept the purpose of section 706 is to provide some measure of protection to older journeymen from a loss of employment due to their age. In order to be a special program, the applicant must first demonstrate that journeymen electricians 50 years of age and older are at some disadvantage by reason of their age when it comes to remaining employed. It has not done so. In any event, even if "older" journeymen electricians are a disadvantaged group, there was nothing presented to the Board to justify journeymen who are 50 years of age getting the protection of section 706 while journeymen who are 49 years of age do not. In other words, since section 706 on its face is restricted to persons 50 years of age and older the applicant, in order to persuade us it is a special program, needs to provide a "rational connection between any restrictions in eligibility and the purpose of the special program itself." Simply put, there was nothing presented to us to demonstrate why the restriction in section 706 was fixed at 50 years of age.

38. The Board accepts it is the applicant's intention to provide some greater security in employment to older journeymen electricians through section 706 of the Principal Agreement. Nevertheless, section 706 of the Principal Agreement clearly does differentiate between two classes of employees in relation to their employment on the basis of age and therefore infringes the rights of one class of those employees. Since section 706 has not been designated by the Commission as a special program and the Board has not found it constitutes a special program within the meaning of section 14(1) of the Code we must conclude section 706 of the Principal Agreement is contrary to the Code.

39. In the result, we find the responding party did not violate the Principal Agreement when it laid off the Grievor because it cannot be compelled to engage in conduct contrary to section 9 of the Code.

40. The preliminary motion made by the responding party is allowed. The grievance filed by the applicant concerning the lay off of the Grievor must therefore be dismissed.

0420-10-R BFI Canada Inc., Applicant v. Teamsters Local Union No. 419, Responding Party

Sale of a Business – Union Successor Rights – BFI purchased York Disposal, and merged operations, intermingling employees and overlapping the scope clauses of the two bargaining units of the same union – The employer applied under s.69(6) to terminate the York bargaining rights so its existing collective agreement with BFI could apply to all employees – The union challenged the application, arguing that s.69 operates to preserve and protect bargaining rights and the expiry of the York collective agreement precluded any order under s.69(6)(a-d); further, the application of s.69(6) is restricted to different, competing bargaining agents – The Board rejected both arguments, holding that s.69(6) applied even though the same union represented both groups of employees – The Board held that s.69 must be read in its entirety: while an order under s.69(6)(a) may not be available, the Board retained the authority to grant a remedy pursuant to s.69(6)(b)-(d) – Further, the Board noted that while the intent of s.69 is to preserve and protect bargaining rights, s.69(6) operates despite these protective provisions in order to resolve the labour relations issues caused by intermingling following a sale – The Board exercised its discretion to grant the order sought

BEFORE: *Brian McLean*, Interim Alternate Chair.

APPEARANCES: *Daniel Leone, Lou Berardicurti and Ray Lecce* for the applicant; *Marisa Pollock and Jason Sweet* for the responding party.

DECISION OF THE BOARD: September 17, 2010

1. This is an application under section 69 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act"). The Board heard the application on June 21, 2010.

2. The facts which give rise to this application are not substantially in dispute. BFI is a waste company. Its employees are represented in Toronto by the Teamsters Local 419 in a collective agreement which has a scope which the parties agree covers Toronto. This application was brought by BFI after it purchased another waste company, York Disposal, and merged York's Toronto operations with BFI's Toronto operations. The employees of York were/are also represented by Local 419. Local 419's collective agreement with York, which also had a scope clause which covered Toronto, expired prior to the sale.

3. In this application BFI seeks to terminate the union's rights with respect to York Disposal which flowed to BFI on the sale, pursuant to section 69(3) or 69(6) of the Act. Local 419 opposes this application. It asserts that the Board has no jurisdiction to make the order sought, and even if it does have jurisdiction, that the union should be permitted to negotiate a solution as its bargaining rights with York should not be terminated.

The Facts

4. Local 419's collective agreement with BFI has a term of October 1, 2009 to September 30, 2012. York Disposal's employees are also represented by Local 419 under a collective agreement which expired on February 19, 2010. On December 11, 2009, the union gave notice to bargain to York and the parties made efforts to bargain a collective agreement. During the course of bargaining, York advised the union that it was going to be sold to BFI and BFI representatives attended at least one bargaining session.

5. On or about March 5, 2010, BFI's purchase of York went through. Following the sale, on May 3, 2010, BFI moved its Toronto employees to the former York yard and all of the York employees became employees of BFI. The union attempted to negotiate with BFI but after some efforts (there is a dispute about how much bargaining actually occurred) the negotiations broke off. Notwithstanding that, the union did not give notice to bargain to BFI at that time. I also note that BFI continued to apply the terms and conditions of the York collective agreement although, since the union did not give it notice to bargain, it may have not been under a legal obligation to do so.

6. Bargaining in conciliation between the Teamsters and BFI with respect to the former York Disposal collective agreement took place on April 16, 2010. Also on April 16, 2010, BFI requested that a "No Board" report be issued.

7. On April 19, 2010, the Teamsters conducted a strike vote amongst the former York employees covered by the York collective agreement. A majority of those present voted in favour of a strike, and the results of the vote were communicated to BFI shortly after the vote was held.

8. On or about April 20, 2010, the Ministry of Labour advised the parties that if York was acquired by BFI, a "No Board" report could not be issued in the name of York.

9. In response to the Ministry's correspondence, the Teamsters named only BFI in a second request for the appointment of a conciliation officer. In this regard, it is noteworthy that section 18 of the Act provides as follows:

18. (1) Where notice has been given under section 16 or 59, the Minister, upon the request of either party, shall appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement.

(2) Despite the failure of a trade union to give written notice under section 16 or the failure of either party to give written notice under sections 59 and 131, where the parties have met and bargained, the Minister, upon the request of either party, may appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement.

10. As noted above, the Teamsters and BFI had previously met in conciliation on April 16, 2010. According to subsection 18(2) of the Act, there was arguably no need for a new notice to bargain being sent to BFI. However, as noted below, a new notice to bargain was in fact subsequently given to BFI.

11. In correspondence dated April 27, 2010, BFI objected to the appointment of a conciliation officer, despite the fact that it had sought a "No Board" report on April 16, 2010. BFI took the position that the collective agreement between BFI and the Teamsters covered the York employees.

12. On or about May 3, 2010, BFI filed this application. On May 5, 2010, the union gave BFI notice to bargain. On May 14, 2010, the Teamsters re-filed their conciliation request with respect to both BFI and York, on a without prejudice basis, based on the assertion by BFI that it had acquired York in such a way as to attract the application of section 69 of the Act.

13. On May 19, 2010, BFI once again objected to the appointment of a conciliation officer and submitted that it was "appropriate for any appointment of a conciliation officer to be delayed until the resolution of the Application before the Board." It appears that the Minister is awaiting this decision.

Decision

14. The employer seeks to have its existing collective agreement apply to all its employees in Toronto, including the former York employees. The union resists this request. It argues that the Board is either without jurisdiction to grant the order requested by the employer or that the Board should exercise its discretion not to make the order sought. There are two facts which underpin the union's argument. The first is that the collective agreement which applied to the former employees of York expired. Prior to the expiration, the union had given to York a notice to bargain a renewal collective agreement and the parties had commenced collective bargaining. Once the sale went through, in the union's view, those negotiations came to a standstill because of BFI's intransigence. Therefore, the essence of the union's position in this case is that the collective bargaining process should be allowed to continue. The second fact is that both groups of employees are represented by the same union. The union agrees it is required by the Act to represent each group of employees separately without regard to the interests of the employees in the other bargaining unit. However, the union says that the intermingling provisions of the Act are predicated on there being two different bargaining agents.

15. It is apparent, based on the material before me, that there has been a sale of business within the meaning of section 69(3) of the Act. I am also satisfied that there was an intermingling

of employees within the meaning of section 69(6) of the Act: not only do the collective agreement scope clauses overlap such that two collective agreements apply to both sets of employees (with the exception of one small group of employees possibly excluded by one agreement and not the other), but the employees have been moved to the same yard and largely work side by side doing the same work.

16. The relevant portions of section 69 of the Act provide:

69. (1) In this section,

“business” includes a part or parts thereof;

“sells” includes leases, transfers and any other manner of disposition, and
“sold” and “sale” have corresponding meanings.

(2) Where an employer who is bound by or is a party to a collective agreement with a trade union or council of trade unions sells his, her or its business, the person to whom the business has been sold is, until the Board otherwise declares, bound by the collective agreement as if the person had been a party thereto and, where an employer sells his, her or its business while an application for certification or termination of bargaining rights to which the employer is a party is before the Board, the person to whom the business has been sold is, until the Board otherwise declares, the employer for the purposes of the application as if the person were named as the employer in the application.

(3) Where an employer on behalf of whose employees a trade union or council of trade unions, as the case may be, has been certified as bargaining agent or has given or is entitled to give notice under section 16 or 59, sells his, her or its business, the trade union, or council of trade unions continues, until the Board otherwise declares, to be the bargaining agent for the employees of the person to whom the business was sold in the like bargaining unit in that business, and the trade union or council of trade unions is entitled to give to the person to whom the business was sold a written notice of its desire to bargain with a view to making a collective agreement or the renewal, with or without modifications, of the agreement then in operation and such notice has the same effect as a notice under section 16 or 59, as the case requires.

(4) Where a business was sold to a person and a trade union or council of trade unions was the bargaining agent of any of the employees in such business or a trade union or council of trade unions is the bargaining agent of the employees in any business carried on by the person to whom the business was sold, and,

- (a) any question arises as to what constitutes the like bargaining unit referred to in subsection (3); or
- (b) any person, trade union or council of trade unions claims that, by virtue of the operation of subsection (2) or (3), a conflict exists between the bargaining rights of the trade union or council of trade unions that represented the employees of the

predecessor employer and the trade union or council of trade unions that represents the employees of the person to whom the business was sold,

the Board may, upon the application of any person, trade union or council of trade unions concerned,

- (c) define the composition of the like bargaining unit referred to in subsection (3) with such modification, if any, as the Board considers necessary; and
- (d) amend, to such extent as the Board considers necessary, any bargaining unit in any certificate issued to any trade union or any bargaining unit defined in any collective agreement.

...

(6) Despite subsections (2) and (3), where a business was sold to a person who carries on one or more other businesses and a trade union or council of trade unions is the bargaining agent of the employees in any of the businesses and the person intermingles the employees of one of the businesses with those of another of the businesses, the Board may, upon the application of any person, trade union or council of trade unions concerned,

- (a) declare that the person to whom the business was sold is no longer bound by the collective agreement referred to in subsection (2);
- (b) determine whether the employees concerned constitute one or more appropriate bargaining units;
- (c) declare which trade union, trade unions or council of trade unions, if any, shall be the bargaining agent or agents for the employees in the unit or units; and
- (d) amend, to such extent as the Board considers necessary, any certificate issued to any trade union or council of trade unions or any bargaining unit defined in any collective agreement.

(7) Where a trade union or council of trade unions is declared to be the bargaining agent under subsection (6) and it is not already bound by a collective agreement with the successor employer with respect to the employees for whom it is declared to be the bargaining agent, it is entitled to give to the employer a written notice of its desire to bargain with a view to making a collective agreement, and the notice has the same effect as a notice under section 14.

...

(9) Where an application is made under this section, an employer is not required, despite the fact that a notice has been given by a trade union or council of trade unions, to bargain with that trade union or council of trade unions concerning the employees to whom the application relates until the

Board has disposed of the application and has declared which trade union or council of trade unions, if any, has the right to bargain with the employer on behalf of the employees concerned in the application.

17. The Union argues that the purpose of section 69 is to preserve and protect bargaining rights when a business is sold, and relies on that purpose in arguing that the Board ought not to (and cannot) make an order terminating bargaining rights in the present circumstances. There is no doubt that one of the primary purposes of section 69 is to preserve and protect bargaining rights. That can be seen in subsections (2) and (3) where bargaining rights automatically continue on the sale of a business whether those bargaining rights are established in a collective agreement or by the statute (following certification or notice to bargain).

18. However, section 69(6) also has at least one other distinct purpose and that is to resolve labour relations issues where a unionized business is purchased and employees are intermingled after the sale. There is no doubt that the Act contemplates that the end result of that process can be the elimination of bargaining rights, the most obvious example being after a representation vote to determine which of two unions represents employees following the sale. In *Perth and Smiths Falls District Hospital*, [1995] OLRB Rep. Oct. 1293, the Board stated about the then section 64(6):

Section 64(6) [now 69(6)] gives the Board broader remedial powers. The result of the application of 64(6) may be that a trade union may lose its bargaining rights altogether, or may find itself representing a much different unit than before the sale. Section 64(6) is invoked when it is not possible or practicable to focus on the simple preservation of bargaining rights, because the very logic of the pre-existing bargaining units has been brought into question as the result of a sale. In *New Dominion Stores Inc.*, 1986 OLRB Rep. Apr. 519, the Board has described the mischief to which section 64(6) then 63(6) is directed as being: ... a situation in which there is a de facto overlap or merger of bargaining units, so that it is difficult to preserve bargaining rights in the 'like' unit without creating operational problems for the successor employer or prejudicing the established rights of the employees. It would make no sense if employees working side by side performing similar tasks were subject to different collective bargaining regimes. In such circumstances, it might also make sense to direct a representation vote to determine which of two unions the employees wish to represent them.

19. Similarly, in *Humber/Northwestern/York-Finch Hospital*, [1997] OLRB Rep. Oct. 872 at paragraph 38, the Board stated:

Section 69(4) of the Act is designed to preserve the "like bargaining units" which existed before, with such revisions as may be necessary to eliminate conflict between established bargaining-unit descriptions. By contrast, the terms of section 69(6) are much broader, and contemplate the possible elimination of bargaining units or collective agreements, as well as the termination of bargaining rights - that is, the restructuring of bargaining units, bargaining agents, and collective agreements, to meet the new situation. Section 69(6) empowers the Board to take a second look at existing bargaining structures and realign bargaining units and bargaining rights in a manner that makes industrial relations sense in the new circumstances.

20. As noted, it is clear that section 69(6) of the Act applies to the facts in this case. There was direct intermingling following the sale as employees were brought together at the same yard. Nevertheless, the union argues that the Board has no jurisdiction to make any orders under section 69(6). The union's analysis on this point starts with section 69(9). That section generally excuses the employer from bargaining after a sale of business application has been filed. The union argues that the words "which trade union or counsel of trade unions, if any, has the right to bargain with the employer" means that the section only applies where there are two different unions competing for bargaining rights. Since the Teamsters Local 419 represents both groups, there is no dispute about which union has the right to bargain with the employer and section 69(9) cannot apply.

21. The union argues that the interpretation is consistent with the Board's view of section 69 – which is that the parties should be encouraged to bargain a solution to the problems which may arise after a sale. In the *Corporation of the City of Peterborough*, [1984] OLRB Rep. Dec. 1752, the Board said about the then section 63(6):

...Section 63(6) is a remedial section designed to deal with representational problems incapable of resolution by collective bargaining and the fact that collective bargaining has taken place between the sale and the application and collective agreements have been entered into indicates that the problems that section 63(6) is designed to deal with have been addressed or have not arisen in the context of a "sale." In our view, contentious issues should be resolved where possible through collective bargaining.

(emphasis added)

22. Because of my ultimate disposition in this case, it is unnecessary to determine whether the union's interpretation of section 69(9) is correct. Its argument is set out here because it is relevant to its argument about the exercise of the Board's discretion. The difficulty with the union's position, if it is correct about section 69(9), is that the Teamsters do not act on behalf of both bargaining units together. It must represent each bargaining unit separately. Two collective agreements cannot apply to one group of employees. Accordingly, when the union says it wants to continue to bargain with respect to the former York employees, there is a real issue about what it is bargaining. The York collective agreement cannot be bargained unless the employer is prepared to negotiate (and it is not in this case) a division in its workforce (between former York and former BFI employees) after the sale. The union does not necessarily seek this result. Instead, the union in this case suggests that it will negotiate enhanced severance rights and will strike if it cannot obtain them. The union's position suggests that it is not really bargaining a collective agreement, but some sort of closure agreement.

23. I turn now to the application of section 69(6). The union argues that because paragraph (a) of section 69(6) refers to collective agreements continued by section 69(2) and since there is no such collective agreement here, then none of (a)-(d) can apply and the Board has no power under any of (a)-(d). This analysis has never been determined by the Board, although I note that in *Canadian General Electric*, [1978] OLRB Rep. June 501, the Board stated:

Even if the Board were able to draw a conclusion that there was a sufficient degree of intermingling for it to exercise discretion under subsection 6, it is quite clear that a declaration under paragraph (a) would be inappropriate since the agreements contemplated by subsection 2 have now been replaced by the

agreements entered into by the applicant. Given the inapplicability of paragraph (a), the Board has serious doubts as to whether any of the other provisions of subsection 6 are applicable to this situation. (emphasis added)

24. The union also relies on *Tech Data Canada Inc.*, 74 C.L.R.B.R. (2d) 269, a decision of the Board which relies, in part, on reasoning found in *Canadian General Electric, supra*. In that case, Tech Data, a non-union company, purchased a unionized company, then negotiated a collective agreement with the union on the understanding that there would later be intermingling of employees and then intermingled employees. The Board determined it did not have jurisdiction to grant a remedy under section 69(6)(a) of the Act. The Board stated:

8. In *Canadian General Electric Company Limited* the Board considered whether it ought to exercise its jurisdiction under what was then section 55 of the Act in circumstances where collective agreements had been entered into following the sale. After reviewing the purpose of section 55, the Board considered whether it had any jurisdiction in the matter. The Board concluded it had no jurisdiction under section 55(4) as the conflict that existed between the two competing trade unions' bargaining rights arose as a result of the recognition clauses in the collective agreements entered into following the sale and not, as required by section 55(4)(b), by virtue of the operation of section 55(2) or (3). The Board then considered the applicability of section 55(6)(a), the subsection under which Tech Data seeks relief in the instant matter. The Board concluded "it is quite clear that a declaration under paragraph (a) would be inappropriate since the agreements contemplated by subsection 2 have now been replaced by the agreements entered into by the applicant."

...

10. The Teamsters submit that the Board ought to apply the conclusions of the Board in *Canadian General Electric Company Limited* and *The Corporation of the City of Peterborough* [where the Board concluded that section 63(6) ought not to be invoked where the employer parties waited 5-1/2 year to apply] to the facts of the present case and conclude that, as a result of the fact that the parties have moved beyond the collective agreement with the predecessor employer, the Board lacks jurisdiction to grant relief pursuant to section 69(6)(a) of the Act.

11. Tech Data distinguishes *The Corporation of the City of Peterborough* and *Canadian General Electric Company Limited* on the basis that both cases involved competing trade unions and the issue was which of the competing trade unions had jurisdiction over the work. In contrast, the present case involves the intermingling of unionized and non-union employees. Further, Tech Data suggests that, while the Board in *Canadian General Electric Company Limited* determined the matter on the basis that it lacked jurisdiction, the better analysis is that contained in *The Corporation of the City of Peterborough* wherein the Board dealt with the matter as a question of the exercise of its discretion.

12. Tech Data relies on *Kitchener-Waterloo Hospital*, [1993] OLRB Rep. March 187 at paragraph 12 and following, wherein the Board considered the purposes of what was then section 64 of the Act and concluded that the Board

has the power under section 64 to make declarations effective prior to the date of issuance. Tech Data submits that the mischief section 69 is designed to remedy exists by virtue of the intermingling of employees that has taken place and that the Board has the jurisdiction to order relief pursuant to section 69 of the Act.

13. For the reasons that follow, it is my determination that the Teamsters is correct in its assertion that the Board lacks jurisdiction to entertain this matter.

14. Tech Data seeks relief under section 69(6)(a) of the Act. Section 69(6)(a) empowers the Board to declare that the person to whom a business was sold is no longer bound by the collective agreement referred to in subsection (2). There is no dispute that the collective agreement referred to in subsection (2) is the collective agreement between the predecessor employer and the union in effect at the time of the sale of the business. In the present matter, that collective agreement is no longer in effect. Rather, Tech Data has directly entered into a collective agreement with the Teamsters, a collective agreement that section 69(6)(a) does not empower the Board to declare no longer binding upon Tech Data. Such is the clear reading of section 69(6)(a) of the Act and the interpretation thereof adopted by the Board in both *Canadian General Electric Company Limited* and *The Corporation of the City of Peterborough*.

25. The difficulty with the union's argument is that it does not take into account the opening words of section 69(6) – "Despite subsections (2) and (3).". If the union is right, then the remedial provisions set out in (6) (a)–(d) can only be exercised when there is a collective agreement under section 69(2). However, if that is the case, there is no purpose to the reference (3) in the opening words of (6). Moreover, under the union's analysis, situations where two different unions were both engaged in collective bargaining after having given notice to bargain would be unresolvable under the Act following a sale.

26. In my view, section 69(6) is designed to give the Board tools to resolve problems which arise when a unionized employer purchases a business and then intermingles employees of the purchased company with its own following the sale. It operates "despite" the provisions of the Act which preserve bargaining rights. I see no reason to limit the Board's powers in such circumstances by narrowly interpreting (6), even though the operation of (6) may sometimes result in the elimination of bargaining rights [see *Perth & Smith Falls* and *Humber/Northwestern/York-Finch Hospital*, *supra*].

27. While paragraph (a) cannot apply, there is no reason why the remaining paragraphs are not open to the Board. The Legislature's use of the word "and" after paragraph (c) does not indicate a legislative intent that all sections operate together. The interpretation of "and" depends on the statutory context; that is, what the list of subsections is about and what is "going on" before the list. Paragraphs (a)–(d) of section 69(6) are remedies that the Board "may" give; they are not set out as "conditions" that must be met before the Board may do something. If there were an "or" between them, it is arguable that the Board could only do one or the other, or the other, etc. However, with the "and" and the ";" between them, all this means is that the Board can do any one or the other, and indeed any combination of 1, 2, 3 or all four of them that make sense.

28. Section 98(2) is an appropriate example of the Legislature making it clear when the Board can act: "...only if the Board determines that all of the following conditions are met". There is nothing like this in section 69(6), and section 69(6) sets out the remedies the Board can give and the Board's remedial powers have always been interpreted broadly. The section cannot be read as saying that where the Board finds intermingling, it must first find that it could possibly do all of the following, and once it finds it could, then it can pick and chose which one. It says what it says: the Board can do a) and the Board can do b) and c) and d). All the "and" means is that the Board can do more than one of them.

29. I turn now to the two prime cases relied on by the union. The passage relied on by the union in *Canadian General Electric* is clearly *obiter* and I see no reason to follow it, given the wording of the statute and statutory interpretation norms. *Tech Data*, on the other hand, is not a case about the Board's jurisdiction to grant a remedy under section 69(6) generally, but rather the Board's jurisdiction to grant a remedy under section 69(6)(a) specifically. Section 69(6)(a) permits the Board to:

declare that the person to whom the business was sold is no longer bound by the collective agreement referred to in subsection (2).

Tech Data holds, correctly in my view, that the Board only has the jurisdiction to make such an order with respect to the collective agreement which existed at the time of the sale. It has no application to the facts of this case, except to demonstrate the difficulty for the employer in resolving the labour relations problems caused by the sale and intermingling if they were to enter in a new collective agreement for the York employees.

30. In my view, therefore, the Board can exercise the powers in section 69(6) of the Act (other than that contained in paragraph (a)) in the circumstances of this case. There has been an intermingling following a sale of business and the problems that arose as a result of the sale can be remedied by the Board making orders contemplated under paragraphs (b)-(d) of the section.

31. That leaves the question of whether the Board should exercise this discretion. In this regard, while I agree that bargaining is the preferred method to resolve issues like this, the Board must be mindful of the labour relation realities of the situation. These are:

- i) The Act precludes two collective agreements applying to a single group of employees. As a result, unless the employer agrees to amend the scope clause of the former York collective agreement, which is unlikely here, the parties are in a quandary. The union cannot bargain an amendment of the scope clause to impasse. Nor can the union bargain a collective agreement with the employer which has the existing scope clause.
- ii) The idea that there could be a strike of part of a single integrated operation of employees with identical jobs is contrary to sound labour relations.

32. Furthermore, while there is a dispute about the extent of collective bargaining that has gone on, it is obvious there have been some discussions between the parties. The employer takes the position that the BFI collective agreement should apply and that it is not prepared to negotiate

enhanced severance packages. It is difficult to see how these issues can be resolved if the union cannot strike. Under the circumstances, I have no confidence that bargaining will resolve the issues which arose as a result of the sale. In my view, these are the kinds of circumstances to which section 69(6) is designed to remedy.

33. Finally, I must determine which collective regime should apply. While the employer in its argument appears to assume that the BFI request should apply, it is not so obvious why this should necessarily be the case. Nevertheless, given all the circumstances and the premises of arguments made in this case, I find it appropriate that the existing BFI collective agreement should apply to all employees.

34. For all of the foregoing reasons, the Board:

- (i) Declares that there has been a sale of business and an intermingling of employees within the meaning of section 69(6) of the Act.
- (ii) Declares that the employees of BFI and the former employees of York constitute one bargaining unit under the BFI collective agreement which expires September 30, 2012.
- (iii) Declares Teamsters Local 419 to be the bargaining agent for the employees of BFI in the following bargaining unit which is set out in the BFI collective agreement:

"The Company recognizes the Union as the sole and exclusive bargaining agent for all employees of the Company within the jurisdiction of the Union, excluding supervisors, persons above the rank of supervisor, office, clerical, sales staff, maintenance and mechanical staff. If the Company relocates any or part of its present operations covered by this Agreement within the jurisdiction of the Union, the Collective Agreement shall be applicable to the relocated operation(s)."

- (iv) Declares, pursuant to section 69(3) of the Act, that Teamsters Local Union No. 419 is no longer the bargaining agent for the employees of BFI Canada Inc. in the "like bargaining unit" in the business sold by York to BFI.
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3379-09-U Teamsters Local Union 91, Applicant v. Boldrick Bus Services Ltd., Responding Party

Duty to Bargain in Good Faith – A variety of incidents occurred during the negotiation of a renewal collective agreement between the parties: a termination application was made, but the union was able to withstand the challenge; a sizeable minority voted against the union, and the union alleged employer initiation (given the result of the vote, the allegation was not adjudicated); notice to bargain was given by the union; a conciliation officer was appointed; the employer offered to have the current and future collective agreements settled by interest arbitration; the union declined the proposal; a “no board” was issued; the employer tabled a “final offer to settle negotiations” and proposed that if the wage component remained at issue, the parties could agree on language and refer the wage issue to an interest arbitrator; the union sought clarification of one aspect of the wage issue; the employer’s clarification was not a “model of clarity”; the employer subsequently withdrew its final offer and did not re-table a fresh offer; in the meantime, the employer implemented a wage raise and at the same time advised the union it would no longer deduct and remit union dues – The Board held that the *LRA* does not mandate that unions and employers enter into a collective agreement, only that they make every effort to do so, and bargain in good faith in the process – These obligations continue beyond the expiry of the statutory freeze, where there may be a strike or lock-out, and even after a legal strike or lock-out has actually commenced – The Board found the employer violated s. 17 when it failed to state its wage proposal clearly and when it withdrew its offer without warning and without re-tabling an offer that the union could address – Application allowed: employer ordered to re-table offer and, if offer is accepted, to reinstate dues deductions

BEFORE: *Brian McLean*, Interim Alternate Chair, and Board Members *R. O'Connor* and *S. McManus*.

APPEARANCES: *David Spears*, *Brian MacDonald*, *Brad Reid*, *Kristina Fox* and *Dana Fox* for the applicant; *Kelsey Orth*, *John Clark*, *Ted Boldrick* and *Darlene Boldrick* for the responding party.

DECISION OF THE BOARD: September 8, 2010

1. This is an application under section 96 of the *Labour Relations Act* (“the Act”) which alleges a breach of sections 17, 70, 72 and 76 of the Act.
2. The Board held hearings to receive the evidence and representations of the parties. The issues which give rise to the application arise out of collective bargaining negotiations. In general, the applicant union alleges that the responding party employer did not bargain in good faith in those negotiations. The facts are not substantially in dispute.
3. The employer is a school bus company which operates in roughly south-eastern Ontario and provides services to the Tri Board Student Transportation Services Inc. (“the Tri Board”), a corporation established by three local area school boards to manage the provision of bussing for the boards’ students. There are several companies which make bids to the Tri Board and are awarded routes. The rates paid for routes are negotiated with the Tri Board by the Tri

Board School Bus Operators Association. Increases to rates of pay for routes include a specific allotment for drivers' wages.

4. The Teamsters represent the employees of a number of bus companies, including some companies that provide bus services to the Tri Board. The Teamsters were certified to represent the employees of the responding party, Boldrick Bus, in May 2007. The parties entered a first collective agreement in June 2008 with a one-year term running to June 30, 2009.

5. Although the application does not allege wrongdoing in the first round of collective bargaining, some of the events which occurred during that round are relied on by the employer. The following first round of bargaining facts are relevant.

6. First, there is no doubt that the bargaining took place in much the same conditions that form part of the basis for the union's complaint in this application. That is, in the first round, the bargaining sessions were held at the employer's premises in off hours. Bargaining sessions were short as a result and progress was slow.

7. Second, there was recognition in the first round of the nature of the economics of school bus companies. That is, small bus companies like Boldrick earn the vast majority of their income from routes awarded by the school boards and that income is dependent on the amount of money the boards are willing to pay. Small companies may not have access to the same level of charter business as bigger companies like Stock Transportation which also provides services to the Tri Board. Therefore, in Boldrick's mind, the wages it pays its employees are completely based on the wage increase allotments provided by the Tri Board. This concept was communicated to the union and, as we shall see, ultimately reflected in the collective agreement wage settlement.

8. Third, in the first collective agreement, the Tri Board allotted the employer money for a 2% wage increase while the parties were under the statutory freeze following the union's giving of notice to bargain, and the company asked the union if they wished the increase to be provided to employees immediately. The union declined and asked that the wage increase be provided on the signing of the collective agreement as a lump sum "signing bonus" or retroactive payment and the employer agreed to that arrangement.

9. Fourth, during the first round of negotiations, the union realized that the Tri Board might provide money for a pay increase during the life of the agreement (even though it was only a one-year term) and, in the absence of a specific clause, the employees would not be entitled to that money. Accordingly the parties negotiated Article 18.2 into the collective agreement which states:

18.2 The Company agrees that should the Tri-Board School Authority or the School Boards provide a proven increase allocated specifically to drivers wages, the aforementioned increase shall be added to the drivers current run rate.

10. Finally, in the first round of bargaining, the employees ultimately received a 2% pay increase and a \$240 "signing bonus". During the life of the first collective agreement, the employer learned that the Tri Board was going to provide for a further 1.5% wage increase in the

allotments for wages. The employer passed this on to employees even before the increase formally came through.

11. In 2009 a group of employees applied to terminate the Teamsters bargaining rights. A representation vote was ordered and held by the Board, and a majority of employees voted in favour of retaining the union. However, a sizeable minority (40%) voted against the union. The Teamsters alleged that the termination application was initiated by the employer. However, in view of the vote results, it was unnecessary to adjudicate that allegation. In this application the union initially re-raised the allegation as part of a theory that the employer was engaged in a concerted campaign to get rid of the union. However, the union withdrew these allegations before the Board on "a without prejudice basis".

12. With this background, the Teamsters gave notice to bargain on May 21, 2009. The union led some evidence about the hours of the day, dates and location in which the employer conducted bargaining. This evidence was led in support of the theory that the employer was trying to get rid of the union by frustrating bargaining efforts. However, given what occurred later and the fact that similar times and locations were agreed to in bargaining in the first round when a collective agreement was achieved, we are satisfied that this conduct did not amount to a breach of the Act either by itself or as part of a larger anti-union campaign.

13. On July 21, 2009, the union requested the appointment of a conciliation officer after bargaining on July 7 and 20. A conciliator was appointed and bargaining continued. In October 2009, the employer offered to have the collective agreement and future collective agreements settled by interest arbitration pursuant to section 40 of the Act. The union declined that proposal. However, the fact that the employer made the proposal suggests that at this time it was prepared to live with the union on a more or less permanent basis. Bargaining continued by email and with the assistance of the conciliator.

14. John Clark conducted the bargaining on behalf of the Company. He testified that he was concerned by the positions taken by the union because the union negotiator, Bradley Reid, seemed to feel that the collective agreement the union recently negotiated with Stock Transport - a much larger company than Boldrick - should be applied to Boldrick. Stock agreed to the collective agreement after a multi-day strike. As a result, after some agreement on language issues in earlier bargaining, by October 26, 2009, the union still had 48 outstanding language proposals on the table. There were also some employer proposals outstanding.

15. In December 2009 the parties met across the table. There was a heated dispute between Mr. Clark and Mr. Reid where Mr. Clark asked Mr. Reid: "what are you stupid or something?" Mr. Reid testified that the employee members of the union's bargaining committee were upset by the comment which the union believes was made in order to undermine the union in the eyes of the employees. Again, while we agree that the remark was inappropriate, it was made in the heat of the moment and Mr. Clark apologized to Mr. Reid following the bargaining session. Under the circumstances, we are satisfied that this comment was not a breach of the Act or part of a concerted employer anti-union campaign.

16. On December 30, 2009, the employer requested that a "no board report" be issued. The "no board" was issued on January 5, 2010, which meant that the employees could strike or the employer could lock out the employees on January 24, 2010. This was a critical moment because

there is no doubt that a strike or lockout is a problematic event in this industry - Mr. Clark called a strike or lockout "suicide". That is because the Company's contract with the Tri Board allows the Tri Board to reassign the Company's routes to a different company if a strike lasts longer than approximately two weeks. As a result, at the time it requested the "no board", the employer advised the union that it would never lock out the employees.

17. The critical day in bargaining and in this dispute was January 9, 2010, when the parties met face to face for the last time. On that day the Company tabled a written "final offer to settle negotiations". The final offer contained proposals for a one-year agreement. The proposal with respect to wages stated:

WAGES: All employees should receive upon ratification 2% increase across the board.

All employees should receive upon ratification a lump sum payment of 2% on all hours worked from September 2009.

18. The Company also orally advised the union that if it was unhappy with the wage proposal, but could otherwise accept the Company's offer on language issues, the Company would be prepared to have wages determined by an interest arbitrator.

19. In order to justify its wage proposal, the Company provided the union with an undated, heavily redacted, letter from the Tri Board to the Tri Board School Bus Operator's Association. The letter, which is framed as a non-negotiable "proposal", indicates there will be a 2% increase in the wage allotment paid to bus companies for the 2009-2010 school year. While the document is undated, it was clearly sent to the Association and received by Boldrick in or about June 2009 at the latest.

20. Mr. Reid and Brian MacDonald (the Local's President who was also present on this day) testified that when the union received the letter they were surprised. They believed that although the collective agreement had expired, the terms of the agreement continued on by virtue of the statutory freeze contained in the Act. One of the terms "frozen" was Article 18.2 which in their mind meant that the 2% wage increase provided for by the Tri Board beginning in September 2009 should have been given to employees at that time. The union ended the bargaining session so that it could obtain legal advice regarding the effect of the statutory freeze on Article 18.2.

21. Prior to Mr. Reid and Mr. MacDonald leaving the bargaining session, they were asked more than once whether they had any questions concerning the employer's proposals. They replied on each occasion that they did not have any questions. The employer appeared to argue that the union's answer at bargaining bound the union. We disagree. The employer's proposal included proposals with respect to a few individual items, but included all items already agreed. It provided no specific position on a number of outstanding union proposals (although it could be inferred that the union proposals were rejected). In our view, the fact that the union had not identified any questions it had at that time did not preclude it from asking questions once it reviewed the proposal more carefully.

22. By letter dated January 14, 2010, the union filed a policy grievance with respect to the Company's failure to provide the 2% wage increase to the employees in accordance with Article 18.2 of the collective agreement. The union went on to state:

While the Union considers the grievance separate from the process of collective bargaining, the Union, in good faith, is bringing this issue to your attention at the present time. The Union requires that the company provide to the union clarity under these circumstances prior to presenting the company's final offer to the membership. Quite simply, is the 2% contained in the final offer over and above the monies entitled to the employees under the terms and conditions of the continuing collective agreement?

23. On that same date the union, assuming it would receive the clarification it asked for, booked a meeting room at a local hotel in order to conduct a ratification vote on the employer's final offer.

24. By letter dated January 15, 2010, Mr. Clark responded on behalf of the Company to the union's clarification request. It advised the union that it believed Article 18.2 had been complied with, that the union never asked for the 2% wage increase even though the Company's non-union staff had been provided the increase in September and the union must have been aware of that fact. The Company also took the position that the grievance was untimely and that there was no time frame in Article 18.2 by which any increase must be paid. (We point out that these positions appear contradictory.) The Company further stated it had assumed the union would want retroactive payment to be paid on ratification in a lump sum as it had desired in the previous round of bargaining.

25. As to the union's clarification request, the employer first noted that the union had no questions about the offer at the time it was tabled and had twice agreed at that time that it understood the employer's offer. Nevertheless, the employer wrote the following in response to the union's request for clarification:

The offer made to you to settle this agreement is made based on the accepted practice established by the Union and the Company during the negotiations for the first collective agreement. The pay increase as offered to the Union is 2% going forward and the difference of 2% of what the employees made for all hours worked from September 2009 until ratification. IE: if an employee makes \$11.93 per hr + 2% = \$12.17, this would mean an employee who worked 500 hrs from September/09 until ratification would receive a lump sum payment of \$120.00.

26. Mr. Clark testified that by this time he was suspicious of the union's motives. He thought they were improperly trying to have the Stock Transport collective agreement be adopted at Boldrick. He was not going to let that happen. He also believed that the union had limited bargaining power because it could not afford to go on strike and risk that the Company would lose the Tri Board business and the employees would lose their jobs. In addition, there was a substantial body of employees that did not want the union based on the results of the vote in the termination application. Mr. Clark believed that the union knew full well that the Company was not offering a 4% raise and was deliberately being obtuse in order to create a situation that could be litigated.

27. Whatever his motives, Mr. Clark's "clarification" was not a model of clarity. Having heard Mr. Clark's testimony on this point, we think it likely that Mr. Clark was trying to reduce the effect of the fact that, given that Article 18.2 required the 2% increase be provided, what was really being offered was a wage freeze. The letter can be contrasted with a letter to employees dated January 26, 2010, about which more will be said, which simply and clearly calls the employer's proposal a 2% wage increase and retroactive pay.

28. On the other hand, we are also suspicious of the true extent of the union's confusion. Did they really think they were getting a 4% (2% on top of the 2% payable under Article 18.2) wage hike? We find that difficult to believe. Nevertheless, even had the union had a little uncertainty, it was entitled to a straight clear answer to its question, something from the Company like: "there is no additional money beyond that owed under Article 18.2". In this regard we note that the Company has never disputed that it owes the employees the 2% increase. Since the union did not get a clear answer, it cancelled the meeting room booked for the ratification vote. Its position is that it would not have the employees vote on an offer which was not clear.

29. On January 19, 2010, the union responded to the employer's January 15 letter. The union's letter states in part:

With respect to our request for clarity on your most recent offer to settle a new collective agreement, we are still confused. It is our position that our members are entitled to an increase in wages pursuant to article 18.2, which increase will be retroactive to the date the Tri-Board provided the increase. Accordingly, it is our position that under the expired collective agreement our members' wages were, or should have been, \$11.93 plus 2%, or \$12.17. We expect this will be confirmed at arbitration. If your current offer is a wage increase of 2% over the rates in the expired collective agreement (which may be adjusted by an arbitrator after hearing our January 14th policy grievance), we will advise our members and ask them to vote on the offer. If, however, you are simply offering to settle the collective agreement by paying our members an increase that they were already entitled to under the terms of the expired collective agreement, we will advise our members that the Company's offer is in effect a wage freeze. It is important both parties are clear on this.

So we repeat the question we posed in our January 14th letter: Is the 2% contained in the final offer over and above the monies the employees were entitled to under the terms of the most recent collective agreement?

30. The employer did not respond so the union wrote again on January 22, 2010. The union stated in part in that letter:

Further to our letter dated January 19, 2010 we ask you once again to answer the following question: Is the 2% contained in the final offer over and above the monies the employees were entitled to under the terms of the most recent collective agreement. As stated prior to a ratification vote it is important both parties are clear on this.

In our letter dated January 14, 2010 we reminded you of your admission at the bargaining table:

By Mr. Clark's own admission at the bargaining table on Saturday January 9, 2010 the Company has been withholding the allotted 2% wage increase for bus drivers for the 2009/2010 in abeyance. (Letter dated January 14, 2010)

To back up Mr. Clark's admission, we further submit the attached document as confirmation monies were received from a 'Board or Province' and paid to non-union employees to which no such guarantee of transfer exists.

31. The union included with the letter a Company memorandum to Boldrick's non-union staff dated September 24, 2009 which stated:

Please note that you have been given a 2% Pay Rate increase for the 2009/2010 school year.

As has always been our practice, should there be any further increase awarded to us, either by the Board or the Province, this increase will be passed on to you.

32. Of course the fact that the union was in possession of the memo to non-union staff only heightened Mr. Clark's suspicion that the union was being disingenuous in its dealings with him and that it was fully aware of the 2% increase in the pay packet from the Tri Board all along.

33. January 24, 2010, the date by which there could be a legal strike or lockout, passed without further bargaining or further communication between the parties. By letter dated January 26, 2010 the employer, without prior warning, withdrew its final offer:

This correspondence is being sent to inform you that, the final offer to settle all of the outstanding issues in the negotiations for a renewal Collective Agreement that was made to the Union on January 9th, 2010 is hereby withdrawn.

Further as the Union has chosen not to present the Employers offer to the employees of Boldrick Bus Service Limited for a ratification or strike vote by the midnight deadline on January 24th, 2010, be advised that the employees of Boldrick Bus Service Limited shall receive the pay increase and retro-active payment, as soon as possible, that was put forward in our final offer to the Union.

34. On January 26, 2010, the Company wrote to the employees in the bargaining unit as follows:

As you know the company made an offer to the union as final settlement of all of the outstanding issues in the negotiations on January 9th 2010. And as the Union has failed to bring the offer to the employees for a vote by the midnight deadline on Sunday, January 24th, 2010. The company feels it is important that the drivers receive the wage increase and retroactive pay that was offered as settlement. Therefore that pay increase shall be implemented as soon as possible.

On the same day the Company advised the union that it would no longer deduct and remit union dues.

35. On January 27, 2010, the union wrote to the employer as follows:

We have your letter of January 26, 2010, stating the Company has withdrawn its offer of January 09, 2010. We have attempted to contact you by phone, leaving messages on January 26, and January 27, 2010. The Union has no offer in place and is requesting you immediately return to the bargaining table. Please contact myself or Bradley Reid so the appropriate arrangements may be made

Once again, we ask you in the future not to copy our stewards on correspondence between us.

We look forward to your prompt reply.

36. The excerpt from the union's January 27, 2010 letter touches on another issue of concern to the union: the fact that the Company copied the union's stewards (who were also on the bargaining committee) with correspondence, despite being asked not to.

37. Following that letter, Mr. MacDonald and Mr. Clark spoke by telephone. Mr. Clark has a limited memory of the conversation. Mr. MacDonald took contemporaneous notes of the conversation and was not challenged in cross-examination with respect to the accuracy of the notes which were used to refresh his memory.

38. Mr. MacDonald's version of the conversation is that he told Mr. Clark that the union needed a 2-year deal and the union would file an unfair labour practice complaint based on the company's bargaining tactics. Mr. Clark told Mr. MacDonald that the union had an obligation to take the company's offer to the members. Mr. MacDonald asked Mr. Clark to sit down and discuss the company's offer; Mr. Clark said they had no obligation to do so. Mr. Clark asked Mr. MacDonald if they would have a vote on the company's offer on that Monday. Mr. MacDonald replied that there could be no vote because there was no offer; Mr Clark replied: "that's right. There is no offer."

39. Mr. MacDonald told Mr. Clark that the company had an obligation to bargain in good faith. Mr. Clark told him to file a bargaining in bad faith complaint.

40. Mr. Clark testified about his position and views at the time of the conversation with Mr. MacDonald. He believed that once the strike/lockout date passed and the union had not conducted a ratification vote on the Company's final offer, the Company was entitled to withdraw its offer and not make a further offer.

Decision

41. The application alleges a breach of sections 17, 70, 72 and 76 of the Act. However, we do not find that section 76 has been violated on the facts of the case, as there was no intimidation or coercion of any person with a view to discourage them from exercising rights under the Act. Therefore, our focus is on the other sections which provide:

17. The parties shall meet within 15 days from the giving of the notice or within such further period as the parties agree upon and they shall bargain in good faith and make every reasonable effort to make a collective agreement.

...

70. No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

...

72. No employer, employers' organization or person acting on behalf of an employer or an employers' organization,

- (a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act;
- (b) shall impose any condition in a contract of employment or propose the imposition of any condition in a contract of employment that seeks to restrain an employee or a person seeking employment from becoming a member of a trade union or exercising any other rights under this Act; or
- (c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act.

42. Section 17 provides for what is commonly known as the "duty to bargain in good faith". It contains two components: an obligation to bargain and a directive to make every reasonable effort to make a collective agreement.

43. The purposes of section 17 (then section 14) are explained by the Board in *DeVilbiss (Canada) Limited*, [1976] OLRB Rep. March 49:

14. ... a very important function of section 14 is that of reinforcing an employer's obligation to recognize a trade union lawfully selected by employees as their bargaining agent. Certainly the freedom to join a trade union of one's choice declared in section 3 of the legislation would be but an edict "writ on water" if an employer could enter into negotiations with no intention of ever signing a collective agreement. But we believe the duty to meet and make every reasonable effort to make a collective agreement has an

even more important function in a modern society that for the most part accepts that trade unions have legitimate and important roles to play. That is to say that the duty assumes that when two parties are obligated to meet each other periodically and rationally discuss their mutual problems in a way that satisfies the phrase "make every reasonable effort", they are likely to arrive at a better understanding of each other's concerns thereby enhancing the potential for a resolution of their differences without recourse to economic sanctions - the impact of which is never confined to the immediate parties of an industrial dispute. At the very least rational discussion is likely to minimize the number of problems the parties are unable to resolve without the use of economic weapons thereby focusing the parties' attention in the eleventh hour on the "true" differences between them....

44. The scope of the parties' obligation to bargain prior to the date on which the parties may strike or lock-out is well established in the Board's case law. In *DeVilbiss, supra*, the Board described the parties' obligation this way:

The section imposes an obligation upon both employers and trade unions to enter into serious discussion with the shared intent to enter into a collective bargaining agreement. Once a trade union is certified as the exclusive bargaining agent of employees within an appropriate bargaining unit the employer of those employees must accept that status of the trade union. It cannot enter into negotiations with a view to ridding itself of the trade union. And thus it can be said that the parties are obligated to have at least one common objective - that of entering into a collective agreement and section 14 is intended to convey this obligation. But this is not to say that they will or are obligated to have common objectives with respect to the contents of any collective agreement they might enter into. The legislation is based upon the premise that the parties are best able to fashion the law that is to govern the work place and that the terms of an agreement are most acceptable when the parties who live under them have played the primary roles in their enactment. In short, the legislation is based upon the notion of voluntarism and reflected in the many administrative and judicial pronouncements that neither trade union nor employer is, by virtue of the bargaining duty, obligated to agree to any particular provision or proposal. Therefore, while they must share the common objective to enter a collective agreement, the legislation envisages that they have differences with respect to just what the content of that agreement should be and those differences may force the parties to have recourse to economic sanctions.

45. However, the Act does not mandate that unions and employers enter into a collective agreement; only that they bargain in good faith and make every reasonable effort to do so. Bargaining power and the potential for economic sanction remain an essential part of the system in Ontario. In *Sumner Press Ltd.*, [1991] OLRB Rep. Oct. 1207, the Board discusses this point as follows:

5. The law in Ontario establishes free collective bargaining as a preferred method for determining terms and conditions of employment. It requires an employer to genuinely recognize a trade union as the employees' bargaining agent, and engage in a sincere effort to reach a collective agreement. But the law does not prescribe the contents of that agreement or require the bargaining parties to make any particular concessions; nor is there unlawful

interference merely because a trade union may be obliged to conclude a collective agreement on terms less generous than those it proposes, or those embodied in a previous contract. The employer's liability does not depend upon the union's appetite for compromise, or on its own, and the law does not protect either party from the loss of face or other consequences flowing from its own miscalculations.

46. It is also clear that these obligations continue beyond the expiry of the statutory freeze, where there may be a strike or lock-out, and after a legal strike or lock-out has actually commenced. However, it is fair to say that after the end of the statutory freeze, the assessment of the obligation to bargain in good faith and make every reasonable effort to make a collective agreement is more complicated. In *New Method Laundry and Dry Cleaners et al.*, 57 CLLC ¶18,059, the Board put it this way:

Although the obligation to bargain is not extinguished when the time limit set in section 49 has come to an end, the nature and extent of the bargaining in which a party is required by law to engage at that point may be quite different from what they were earlier. It is impossible to spell out in detail what an employer or a trade union will or will not be required to do at that stage in order to comply with section 11. Each case will turn on its own peculiar facts and there is little profit in seeking to set out my views on what must of necessity be a series of hypothetical situations. Some of the factors which will have to be taken into account will probably have to be whether one of the parties has requested the other to resume negotiations, whether the party making such a request has indicated that it is prepared to make significant concessions, whether a strike or lock-out is in process and similar matters.

47. One of the changes that occurs after the statutory freeze ends and adds to the complications, is that the employer is free to impose terms and conditions of employment. (See *Neenah Paper Company of Canada*, [2006] OLRB Rep. March/April 224 and *Sumner Press*, [1991] OLRB Rep. Oct. 1207 at para. 41.) The usual prohibition against the employer directly dealing with employees therefore diminishes, after the commencement of the legal strike/lock-out period.

48. With the foregoing principles in mind, we are satisfied that in the case before us the employer violated section 17 of the Act in several respects.

49. The process of rational discussion contemplated by section 17 of the Act necessarily requires that the parties disclose to one another certain kinds of relevant information. This did not occur in this case because the employer was unwilling to state its wage proposal clearly. The employer failed to make every reasonable effort to make a collective agreement when it declined to provide a clear answer to the union's straightforward and crucial question: was the employer's wage proposal at bargaining in addition to the 2% wage increase which even the employer agrees it was obligated to provide to the employees under Article 18.2 of the collective agreement. While we think it likely the union thought it likely that the 2% wage proposal was in fact a *de facto* wage freeze, it was appropriate for them to ask the question. The employer's January letter begged the question: is the proposal on top of what should already have been provided? Had the employer responded clearly, as it easily could have, the union could have proceeded with its planned ratification meeting and the parties may now have a collective agreement.

50. Second, and more importantly, the employer's withdrawal of the offer without warning and its failure to re-table that offer or any other offer also amounts to a failure to bargain in good faith in the circumstances. The employer put the union in a position where there was literally nothing it could do to conclude a collective agreement. The employer had no business justification or other proper labour relations reason for withdrawing its offer and, later, not re-tableting a clarified proposal.

51. The employer relies on the right, following the strike/lockout deadline, to impose economic pressure on the union. Our difficulty with the employer's position is assessing the purpose of the economic persuasive power it was wielding. It is difficult to come up with any theory for the employer's position that does not involve an assault on the union's representational rights. No theory was put to us. What we do know is that the employer's bargaining position cannot have been designed to force the union to accept the employer's position in bargaining because that position had been withdrawn and the employer refused to reinstate it without justification. Nor was there a suggestion that the employer was attempting to compel the union to accept any other offer. We are satisfied that the purpose of the employer's position was to end the union's influence as bargaining agent for the employees or destroy the union's presence at Boldrick Bus Services altogether.

52. Under the circumstances, we find it appropriate to put the parties back in the position they would be in if the violation had not occurred. The Board:

- i) orders the employer to re-table the offer dated January 9, 2010, including the offer to have wages decided by interest arbitration. To be clear, that offer contains no wage increase above what the employees are currently earning;
- ii) orders that if the union accepts the offer of interest arbitration or the employees ratify the original offer, then the employer is to pay to the union all dues which would have been deducted and paid from February 2010. However, if the offer is not accepted, we see no reason to reinstate dues deduction.

53. The responding party is directed to post copies of this decision immediately in a location or locations where they are most likely to come to the attention of individuals in the bargaining unit. These copies must remain posted for a period of 30 days.

54. We are seized to deal with any difficult implementation or orders.

3610-09-U Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union 647, Applicant v. Canada Bread Company, Limited and Bakery, Confectionery, Tobacco Workers and Grain Millers International Union AFL-CIO, CLC, Local 264, Responding Parties

Standing – Unfair Labour Practice – Milk and Bread Drivers Local 647 and Bakery, Confectionary Local 264 each had collective agreements with Canada Bread at

different locations – Local 647 claimed that a collective agreement entered into between Canada Bread and Local 264 was void because it was spawned following the early termination of an existing agreement, and notice of the early termination had not been properly posted – Local 647 argued that the employer had effectively “chosen” 264 over 647 to be the bargaining agent of a new facility it was planning to open – The applicant also argued that the new agreement gave Local 264 bargaining rights beyond the geographic scope of any rights it actually held – Finally, Local 647 submitted that its own collective agreement with one of Canada Bread’s facilities provided that its employees would be offered jobs at the new facility – The Board held that Local 647 had no standing to challenge the early termination: Local 647 was not affected in any way by it and only an employee in Local 264’s bargaining unit could claim the improper posting – There were several possible consequences of the new collective agreement between Local 264 that could affect the employees represented by Local 647, but since the new facility had not opened and there were no employees currently working there, those consequences were speculative – The applicant had no standing to bring these challenges – Application dismissed

BEFORE: *Brian McLean*, Interim Alternate Chair, and Board Members *R. O’Connor* and *S. McManus*.

DECISION OF THE BOARD: September 29, 2010

1. This is an application under section 96 of the *Labour Relations Act*, 1995, S.O. 1995, c.1, as amended (“the Act”) which alleges a breach of sections 5, 44, 53, 58(3), 70, 72, 73 and 76 of the Act by the responding parties.
2. The application concerns a claim by Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union 647 that a collective agreement entered into between the two responding parties is void because it was tainted by employer support, not properly ratified and was an improper voluntary recognition agreement. The collective agreement under challenge gave Local 264 bargaining rights beyond the geographic scope of any bargaining rights held by Local 264 to cover a new large bakery in Hamilton the employer intends to build. Local 647 objects because it says that the employer “chose” Local 264 as the bargaining agent rather than have the employees in the bargaining unit make the decision about which bargaining agent they wished to select. Furthermore, it is quite possible, due to a collective agreement provision in Local 647’s agreement with the employer, that Local 647’s members might get jobs at the new bakery, and they do not want Local 264 selected as their bargaining agent by the employer.
3. The employer and Local 264 deny the applicant’s claim. They also allege that Local 647 has no standing to make this application and therefore it ought to be dismissed. The Board held a hearing to hear argument with respect to the “standing” issue. This decision determines that issue.

The Facts

4. This application alleges that the employer conspired with Local 264 to ensure that Local 647 would not become the bargaining agent for the employees at its planned new Hamilton bakery. The basic facts which give rise to the application are largely not in dispute, and for the

purpose of the application, we assume the facts in the application are true and provable. We also note that, in addition, the applicant agrees with and relies on certain facts set out in the responses.

5. The employer responding party is a bread producer. It has a number of bakeries, including three in the Toronto area: the Fraser Avenue Bakery, the Etobicoke Bakery and the Central Bakery on Cawthra Avenue. The company also has a bakery in Hamilton, the Nebo Road Bakery.

6. The employer's employees are represented by trade unions. The applicant Local 647 represents employees at the Fraser Avenue Bakery under a collective agreement with a scope which covers Metropolitan Toronto. The collective agreement was negotiated after the expiry of the predecessor agreement with a duration of January 1, 2007 to December 31, 2010. The collective agreement contains a clause which provides that if the bakery closes and move to another location, the employees will be offered positions in order of seniority at the new location. Article 6.03(c) states:

In the event that the Dempster Canada Bread Plant located at 2 Fraser Avenue is moved outside of Metropolitan Toronto, employees will be offered jobs according to classification and seniority.

7. Local 647 also represents employees at the Etobicoke Bakery. The scope clause of that collective agreement is restricted to 35 Rakely Court in Etobicoke. The Etobicoke Bakery collective agreement has a clause which requires the company to enter discussion to improve severance pay if the plant closes.

8. Local 264 is party to a collective agreement with the employer in Hamilton effective from November 1, 2004 to October 31, 2009. The collective agreement had a scope clause limiting the union's bargaining rights to 155 Nebo Road in Hamilton. The collective agreement was renewed as discussed below.

9. Local 264 is also party to a collective agreement with the employer for its "Central Bakery" operations in Toronto. The term of that collective agreement was October 3, 2007 to October 2, 2011. The scope of that collective agreement was the entirety of the Municipality of Metropolitan Toronto save and except employees covered by other bargaining units.

10. Local 264 and the employer commenced bargaining with respect to the renewal of the Nebo collective agreement in August 2009. Local 264 and the employer assert that the employer advised the union during those negotiations that it was planning to close its Toronto operations and build a new big bakery. They advised that if such closure did occur, south-western Ontario would likely be the location for the new facility. It would appear that during negotiations, Local 264 became aware of the likelihood that the company would open the new bakery in the Hamilton area.

11. Local 264 sought to expand its bargaining rights so that they would cover any new facility built in Hamilton. The employer refused to agree. Eventually, Local 264 and the employer agreed to the following Letter of Understanding as part of the collective agreement and dated October 1, 2009:

The Company agrees that if it opens a new bakery facility within the City of Hamilton during the life of the collective agreement, that it will recognize the BCTGM Local 264 as the collective bargaining agent for the employees in that plant.

The collective agreement's scope clause was, however, not changed and is restricted to Nebo Road.

12. Armed with the knowledge that the employer might be closing some of its Toronto operations, Local 264 decided to approach the employer about negotiating changes to the Central Bakery collective agreement. It obtained the permission of its employees to ask the employer to negotiate changes, even though the collective agreement was not due to expire until 2011. On November 2, 2009, Local 264 and the employer made a joint application for early termination of the Central Bakery collective agreement. The application in Board File No. 2321-09-M states, in part:

In support of the request, the applicants rely on the following material facts:

1. The Trade Union has a long standing collective bargaining relationship with the Employer with respect to the employer's bakery operation at 130 Cawthra Avenue in Toronto, Ontario.
2. In October 2007, the Trade Union and the Employer negotiated a renewal collective agreement for the Central Bakery operation with an expiry date of October 2, 2011. At that time, it was not within the contemplation of the parties that the plant would close or move during the life of the collective agreement. The collective agreement does not address the possibility of the movement of work performed at the plant at all. The only provision in the collective agreement dealing with the closure of the plant is a one sentence requirement that severance would be paid in accordance with the *Employment Standards Act* in the event of a plant closure or permanent layoff.
3. The possibility now exists that the Central Bakery plant will be closed and relocated outside the bargaining unit scope (Metropolitan Toronto) prior to the expiry of the current collective agreement. The parties are, accordingly, requesting that the Board agree to the early termination of the collective agreement in order to allow the parties to negotiate and implement a new collective agreement which deals with the possible closure of the bakery and the transfer of one or more production lines from Central Bakery to a new facility outside of Metropolitan Toronto.

Local 647 alleges that notice of the application was never posted, although it agrees that some employees were informed verbally of the early termination request.

13. By decision dated November 20, 2009, the Board granted early termination, in part on the basis that no employee objected to the joint application. Local 647 submits that the (alleged) failure to post the application for early termination means it is procedurally flawed, is a nullity and the Board's decision granting early termination ought to be revoked/reconsidered by the Board.

14. Local 647 also make various allegations about the collective agreement that was entered into following the granting of early termination of the predecessor collective agreement:

20. Moreover, Canada Bread and Local 264 met to 'negotiate' the 'renewal collective agreement' prior to the Application for Early Termination being filed with the Board. When the parties met, Local 264 advised it had no proposals and asked that Canada Bread provide all of the proposals. Local 264 then accepted all of Canada Bread's proposals wholesale. Local 264 then purported to hold a 'ratification meeting'. This meeting was also held before the Board granted the Application for Early Termination of the then existing Central Bakery Collective Agreement. At the meeting Local 264 simply read out the 'new' agreement and refused to provide any employee in attendance with a copy.
21. On January 29, 2010 Local 264 and Canada Bread executed the 'renewal' agreement with a term of November 20, 2009 to October 2, 2014.
22. Local 264 never ratified this 'renewal' agreement after the Board had granted the Application for Early termination. Local 647 submits that as a result this 'renewal' Central Bakery Collective Agreement was not validly ratified and is not a collective agreement under the Act.

15. No Central Bakery employee has complained about the process which Local 264 and the employer engaged in.

16. On January 11, 2010, Canada Bread notified Local 647 that it would make an announcement to employees of the Etobicoke and Fraser bakeries the next day. On January 12, 2010, Local 647 gave Canada Bread notice to bargain a renewal collective agreement for the Etobicoke Bakery. Also, on that day, the employer advised Local 647 that it would start to build a new bakery in Hamilton, and that "as a result", Canada Bread would be closing the Etobicoke, Fraser and Central bakeries. The employer advised Local 647 that the Central Bakery would close in 2010, Fraser Bakery in 2012 and Etobicoke in 2013. On February 17, 2010, the employer advised that it had purchased a site in Hamilton and that construction was expected to commence in June 2010, with production commencing one year later. The employer advised Local 647 that the new bakery would be in Hamilton and that Local 264 held bargaining rights for Hamilton and that the Central collective agreement would apply.

17. Construction has not yet started on the new Hamilton bakery. However, the responding parties do not want the application dismissed as premature for that reason. They are confident the bakery will be built and would like these issues resolved.

Decision

18. This applicant seeks relief in a number of respects:

- 1) It asserts that the Board's Early Termination decision dated November 20, 2009 was procedurally flawed because notice of

the application was not posted. It requests reconsideration of that decision.

- 2) Local 647 seeks to set aside the Central Bakery collective agreement because it alleges it:
 - (a) was negotiated before the Board granted early termination of the predecessor collective agreement, and
 - (b) was not ratified by the employees in the bargaining unit;
 - (c) is tainted by employer support;
 - (d) amounts to an improper voluntary recognition.

19. It is appropriate to start with the applicant's first request: reconsideration of the Board's November 20, 2009 decision. In the view of the Board, Local 647 clearly has no standing to make such a request and, in any event, the reasons advanced by Local 647 do not justify that remedy. Local 647 is not affected by the early termination in any way. The applicant's complaint is about the collective agreement that was negotiated in place of the terminated agreement, not the terminated agreement. In these circumstances, only an employee in the bargaining unit can claim to be affected by a failure to post a Notice of Early Termination and it is likely too late for an employee to make such a complaint in any event.

20. The cases in which unions have been permitted to challenge collective agreements between other parties have arisen out of two circumstances: first, where the challenged collective agreement directly affects bargaining rights held by the challenging union; and/or second, where the challenging union has brought an application for certification in which it challenges whether the collective agreement purportedly in place presents a bar to its application. Neither condition is present here.

21. The applicant's right to bring this application depends on it or the employees it represents having a legal interest in the matters it complains of. The applicant (unlike Local 264) has no bargaining rights in Hamilton at all. Its existing bargaining rights are restricted to bakeries located in Toronto. Therefore, its existing bargaining rights could not be and were not affected by the agreement between the employer and Local 264.

22. Of course that is not the end of the matter. An application for certification or an effect on bargaining rights are not the only circumstances which create a legal interest in the collective agreement sufficient to give Local 647 standing. If the agreement directly affects Local 647's legal interest or the legal interests of the employees it represents, that would also justify its standing.

23. The agreement between Local 264 and the employer has several possible consequences for the applicant.

24. The first possible consequence is that Local 647 was unable to, in its most recent round of collective bargaining, negotiate recognition rights with respect to Hamilton. Apart from the fact

that Local 647 would be engaging in essentially the same thing it objects to in this case, it is clear that the applicant could not force the company to have accepted that arrangement even in the absence of the agreement. It could not engage in a legal strike to compel recognition of bargaining rights in Hamilton. In other words, given the employer's apparent decision to deal with Local 264, the applicant's interest appears nominal. Moreover, the applicant has already concluded a new collective agreement with the employer; this interest has now been eliminated. Even if the Board were to make the orders requested and set aside the Agreement, the applicant could not benefit by such decisions.

25. The second consequence of the new Central Bakery Collective Agreement is with respect to Local 647's ability to organize employees in the new Hamilton bakery. However, we note that Local 647 can make an application for certification at any time after there are actually employees employed at the new bakery, and make the same arguments it seeks to make at this time. The exception might be with respect to the ratification of the agreement. However, in our view, Local 647 is not the appropriate party to complain that technical requirements of ratification have not been met when no member of the bargaining unit is complaining.

26. The third consequence of the Agreement is the effect it may have on employees currently represented by the applicant. It is not disputed that Article 6.03(e) of the applicant's Fraser Bakery collective agreement with the employer is invoked by the closing of the bakeries in Toronto and the opening of the Hamilton bakery. Article 6.03(e) of the Fraser Avenue collective Agreement gives employees the right to obtain employment at the new Hamilton bakery. These employees are arguably affected by the fact that if they accept employment at the Hamilton bakery, they will fall within a bargaining unit represented by Local 264.

27. However, an employee's interest does not exist in the abstract. In order to have an interest, the employee must first actively commence employment in Hamilton. Second, the employee must desire to challenge Local 264's bargaining rights and have Local 647 act on its behalf in bringing such application. At this point, the existence of these conditions is speculative.

28. At this time, therefore, the agreement does not affect the applicant's legal rights nor the legal rights of the employees it represents. For all these reasons we do not find that the applicant has the current legal standing to bring this application and it is dismissed.

29. Because of our decision, it is unnecessary to determine whether the application discloses a *prima facie* breach of the Act.

0816-10-U; 0817-10-U Dr. Peter A. Khaiter, Applicant v. York University Faculty Association (YUFA), Responding Party

Duty of Fair Representation – Practice and Procedure – Unfair Labour Practice – After finding that the complainant had not made out a *prima facie* case, and reviewing eight previous duty of fair representation complaints, the Board found the complainant to be a vexatious litigant on the basis of the following material: he brought multiple proceedings making basically the same allegations; he consistently sought relief the Board would not

conceivably grant; he made unjustifiable and unreasonable aspersions against the lawyers representing the Union and its officials and representative, and against the adjudicators and officers of the Board; for the Board to address the series of exaggerated and unsupported allegations was an abuse of public resources and an abuse of process – The applicant was declared a vexatious litigant and not permitted to file a complaint against the union or employer without leave of the Board – Application dismissed

BEFORE: *Diane L. Gee*, Interim Chair.

DECISION OF THE BOARD: October 27, 2010

1. These are complaints under s.96 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the “Act”) that the responding party (“the Union”) has breached its duty of fair representation under section 74 of the Act.
2. This decision concerns the prima facie merits of the complaints. It also concerns a request by the Union, supported by York University (“the Employer”), to have the applicant declared a vexatious litigant.
3. I have reviewed the complaints and I find they disclose no prima facie case for the relief sought in either application.
4. Board File No. 0816-10-U concerns a complaint of unfair representation in a 2009 union policy grievance the Union pursued to adjust teaching credits. A claim for the applicant was not initially included in the grievance. He inquired why he was omitted. The Union reviewed the situation and decided to include him. The Union settled the grievance with York University for the benefit of three of its members, the applicant among them. The applicant was not happy with the settlement.
5. A union is empowered to settle a grievance on such terms as it considers reasonable, taking account of all the circumstances reasonably relevant, including the costs of litigating the grievance at arbitration, the interests of the bargaining unit as a whole, and the reasonableness of the compromise offered by the employer. What is plain from the application in Board File No. 0816-10-U is that the Union considered the applicant’s interests, it sought his input, and it resolved the grievance after giving the applicant an opportunity to comment on the proposed settlement. Given that the grievance was a policy grievance, brought at the Union’s instance, the Union more than satisfied its duty to the applicant under section 74 of the Act to confer with him during its pursuit of the grievance. The complaint does not therefore make out a prima facie case of a violation of the Act or for the relief sought. It is to be dismissed.
6. Similar considerations apply to Board File No. 0817-10-U. The application concerns a grievance filed by the Union, and settled by it, with respect to discipline issued to the applicant. Notably, the applicant gives no details of why the discipline was imposed, so it is impossible for the Board to assess the reasonableness of the Employer’s action. Nor therefore can the Board conclude that the Union’s compromise in the settlement it reached with the Employer was in any manner improper. The Union obtained a settlement which reduced the discipline. As above, the Union considered the applicant’s interests, it sought his input, and it resolved the grievance after giving the applicant an opportunity to comment on the proposed settlement. There is no

explanation in the application as to what was deficient in the settlement, nor why it was arbitrary, discriminatory or in bad faith. Given that the applicant does not disclose why he was disciplined, nor why the Union's settlement was arbitrary, discriminatory or in bad faith, the Board cannot conclude that the settlement reached by the Union was not sufficient to satisfy the duty of fair representation under section 74 of the Act. The application is therefore to be dismissed for failing to disclose a *prima facie* case.

7. The Union and the Employer seek an order that the applicant be declared a vexatious litigant and that he be precluded from filing a fresh complaint against the Union and/or the Employer without leave of the Board. The Board would in each instance need to be satisfied that the complaint was not frivolous or vexatious and that it engaged a real issue on the basis of a *prima facie* case.

8. The Union and the Employer have requested such a declaration in previous applications by the applicant, but the Board was not then persuaded of the need to grant their request.

9. The Board invited submissions from the parties on the Union's and the Employer's request that the applicant be declared a vexatious litigant and that he be enjoined from filing fresh applications against them without the Board's prior consent. The Board has considered the submissions received.

10. The Union has provided a history of the long sequence of litigation the applicant has brought against it and the Employer before the Board, the courts and the Human Rights Tribunal of Ontario. A part of that history is also described in *Khaiter v. York University*, 2010 HRTO 1901 (CanLII) (Muir).

11. I have reviewed the substantive decisions issued by the Board in the eight previous duty of fair representation complaints the Grievor has filed against the Union before the Board. Those decisions are: *Khaiter v. York University Faculty Association*, 2010 CanLII 49187 (ON L.R.B.); *Khaiter v. York University Faculty Association*, 2008 CanLII 45271 (ON L.R.B.); *Khaiter v. York University Faculty Association (YUFA)*, 2008 CanLII 10035 (ON L.R.B.) *Khaiter v. York University Faculty Association (YUFA)*, 2007 CanLII 55931 (ON L.R.B.) and *Khaiter v. York University Faculty Association (YUFA)*, 2007 CanLII 30285 (ON L.R.B.). In each of the applications in which those decisions were issued, the Board decided that the application had not established a *prima facie* case for the Board to inquire into.

12. On the basis of the material filed by the applicant and the Union, in light of the history of the applicant's litigation before the Board, the Board has concluded the following regarding the applicant. He has brought multiple applications making substantially the same allegation that the Union has violated section 74 of the Act in its representation of him because it acted in a manner that was discriminating, harassing and humiliating. He has consistently sought relief that the Board would not conceivably grant. The issues raised in the earlier applications have been rolled into later applications, including these two applications. The applicant has made unreasonable and unjustifiable aspersions against the lawyers representing the Union, and against its officials and representative, and against the adjudicators and the officers of the Board. The applicant's repeated use of the Board's procedures has severely harassed the Union and its officials, putting it to considerable unnecessary cost. Chiefly, though, the Board and its resources have been expended,

through time, work and effort on what amount to a series of exaggerated and unsupported allegations against the Union and the Employer. For the Board to so waste its time and resources is an abuse of the public resources of this province, and plainly an abuse of process.

13. The Board has no jurisdiction to award costs against a vexatious litigant, as the applicant clearly is, therefore costs orders cannot be a restraint on him.

14. The Union and the Employer should face bona fide, though perhaps mistaken, applications before the Board. What they should not have to face is a course of conduct that is unremitting, intemperate, lacking in merit, and vexatious. The Board therefore issues the following declarations, orders and directions:

- a) the applications are dismissed for failing to disclose a prima facie case for the relief sought in each of them;
- b) the applicant is a vexatious litigant;
- c) the applicant may not file nor deliver any application before the Board against the York University Faculty Association or against York University, or against any of their officers, officials, or representatives, without a decision from the Board permitting him to do so. Should the applicant file an application in breach of this ruling, it will be deemed to be null and void, and the responding party need not respond unless directed to do so by the Board;
- d) I am not seized of any future application brought by the applicant.

2850-08-U George Carter, Applicant v. National Automobile, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 1285, Responding Party v. Chrysler Canada Inc., Intervenor

Duty of Fair Representation – Employment Standards – Chrysler provided notice of indefinite layoff to 1,110 employees, in the middle of which was a planned two-week shutdown of the affected part of the company - The union negotiated an opportunity for 850 of the most junior employees to earn wages for those two weeks – The more senior employees, which included the applicant, were not afforded the same opportunity but were informed the lay-off would not continue – The applicant argued he was entitled to payment for the same two week period as per the notice provisions of the *ESA* and the union's failure to seek redress for this breach as well as the work opportunity negotiated for the most junior employees violated the duty of fair representation – The Board held that the proper focus of a s.74 complaint was whether the union's conduct was arbitrary, discriminatory, or in bad faith, and not an exhaustive assessment of the *ESA* challenge – The Board found the union had appropriately balanced the interests of all members in negotiating the work opportunity – Application dismissed

BEFORE: *Kelly Waddingham*, Vice-Chair.

DECISION OF THE BOARD; September 20, 2010

1. This is an application pursuant to section 96 of the *Labour Relations Act*, 1995, S.O. 1995, c.1, as amended (the "Act") in which the applicant George Carter ("Carter") alleges that the National Automobile Aerospace, Transportation and General Workers Union of Canada ("CAW") has violated section 74 of the Act, when the CAW refused to file a grievance. A consultation was held on September 14, 2010.

2. The issue between the parties in this application focuses on a very narrow legal issue. While there are some factual differences between Carter and the CAW, the essential facts are not in dispute. The Board finds that it is possible to dispose of this matter without a hearing.

3. Carter was and continues to be a production operator at Chrysler Canada Inc. with a seniority date of July 7, 1997. The seniority list is posted throughout the plant. Many of the provisions of the collective agreement are dependent on a worker's seniority.

4. In November 2007, Chrysler announced that they would eliminate the third shift at its facility. The CAW was informed that the employer intended to issue notice of indefinite layoff to the most junior 1,100 production workers at the plant.

5. On November 7, 2007, Carter was one of the 1,100 workers who received notice of indefinite layoff, effective February 29, 2008.

6. In December 2007, the workers were aware that Chrysler had scheduled "down weeks" during the weeks of January 21, and January 28, 2008. Down weeks are regular interruptions of production to address inventory levels. The CAW was concerned that the employees who had received lay-off notices would have a continuing opportunity to earn wages during the full period of the 16 weeks of notice provided pursuant to the termination provisions of the ESA.

7. Negotiations between CAW and Chrysler ensued and in January 2008, there was an agreement that the most junior 850 of the 1,100 affected employees would have an opportunity to attend a paid week of union awareness training during one of the two down weeks. The CAW and Chrysler further agreed that on the other of the two down weeks, employees would be assigned to take Sporadic Paid Absence ("SPA"). SPA is not a vacation. The qualifications for SPA under the collective agreement are different than for vacation.

8. Carter's pay stubs for January 3 and 10, 2008, indicated that he would receive the SPA week. However, he was one of the 250 more senior employees who did not have the opportunity to attend union awareness training nor SPA.

9. On January 4, 2008, the CAW's "Zone 3-"B" Shift Report" notified workers that:

At this time the weeks of January 21st and January 28th are scheduled down weeks. Provisions have been made for the junior 850 production employees to attend Workplace (Union Awareness during

one of these weeks. Their SPA week will be re-scheduled to the other week.

10. On January 9, 2008, the "Plant Chairperson's Report," the CAW Local's publication reported:

The Company has agreed to allow the most Junior 850 employees in the Plant to attend Union Awareness the week of January 21st or the week of January 28th.

The Company has also moved those same employees SPA week to the other week of layoff ...

11. At the end of January and early February 2008, Carter made inquiries of the CAW and Chrysler and the CAW as to why he did not have the opportunity to attend union awareness training nor receive SPA, he was told that he was part of a more senior group of 250 employees who Chrysler and the CAW anticipated would not be laid off with the elimination of the third shift, despite having received notice of indefinite lay-off.

12. On March 3, 2008, Carter received official notice that he would not be laid off.

13. Mr. Carter's position is that Chrysler has contravened the *Employment Standards Act* ("ESA"). Specifically, Mr. Carter has argued that Chrysler breached the ESA's notice of termination provisions when he was not afforded the opportunity to receive payment for the two (2) weeks ending January 21st and January 28th 2008. He has argued that CAW's negotiation of this opportunity with Chrysler for some of the laid off its laid off employees and its failure to seek redress for him through the grievance process, constitute a violation of its obligations under s.74 of the Act.

14. It may well be that the applicant's interpretation of the ESA is correct. However, a precise and exhaustive assessment of Chrysler's obligations under the ESA is not the proper focus of litigation in these proceedings. What is at issue is whether or not CAW has engaged in conduct which is arbitrary, discriminatory, and in bad faith. I conclude that it was not.

15. Whether the CAW's assessment of the *Employment Standards Act* (the "ESA") is correct is not at issue. The duty of fair representation does not require a union to be correct in its assessment of a grievance. (*Retail, Wholesale and Department Store Union*, [1992] O.L.R.D. No 3830; *Ivan Gudelj*, [1994] O.L.R.D. No 1152. It only requires that the CAW not act in a manner which is arbitrary, discriminatory or in bad faith.

16. The CAW did not act in an arbitrary, discriminatory or bad faith manner when it was concerned that the most junior 850 employees would be able to earn full wages during a difficult period of lay-off and formed an agreement with Chrysler to achieve this result. It may be that this opportunity benefited certain members of the bargaining unit but not others, such as Mr. Carter. But this is neither bad faith nor discrimination. A Union is not required by the Act to become the insurer against every adversity that is suffered by an individual employee.

17. In the present case, the 850 employees whose employment was permanently terminated enjoyed the full benefit of a 16 week paid notice period, and received wages for the two down weeks in January/February 2008.

18. Mr. Carter and the other 250 employees who had also received an indefinite lay off notice did not receive payment for the two down weeks. But neither did Mr. Carter suffer the termination of his employment. Further Mr. Carter knew as early as January 4, 2008 from the CAW notices posted in the workplace that based on his seniority he would probably not be subject to a permanent lay-off. This was confirmed by Chrysler when Mr. Carter approached the human resources department in February 2008. In not receiving payment for the two down weeks, Mr. Carter was placed in the same position as those workers would did not receive a notice of indefinite layoff.

19. In this case the CAW's balancing of all members interests at a time when the North American car industry was subject to economic devastation and an entire shift was being removed from a plant is in no way a violation of the duty of fair representation.

3737-05-G International Brotherhood of Electrical Workers, Local 353, Applicant v. **Jacobs Catalytic Ltd.**, Responding Party v. The Electrical Trade Bargaining Agency of the Electrical Contractors Association of Ontario and General Presidents' Maintenance Committee for Canada, Intervenor

Construction Industry Grievance – Estoppel – The union alleged that fire restoration work performed by Jacobs Catalytic was construction work required to be performed under the Principal Agreement – The Board considered, assuming without finding the work to be construction, whether the union was estopped from enforcing the Principal Agreement – First, the Board was persuaded that the past practice evidence of fire restoration work having been performed by union members under the Maintenance Agreement constituted a representation by the union that it would not enforce the Principal Agreement – Second, the Board found no specific action or inaction taken on the part of Jacobs based on the representation – Unlike a previous case, Jacobs did not enter into a contract with Petro-Canada nor negotiate its rates with Petro-Canada based on the representation – Finally, the Board also found that Jacobs would suffer no detriment if the union were permitted to enforce the terms of the Principal Agreement – Accordingly, the union was not estopped from enforcing the Principal Agreement – Matter continues to determine whether any or all of the work is construction

BEFORE: *Diane L. Gee*, Interim Chair.

APPEARANCES: *Alan Minsky* and *Cameron Commandant* appeared for the applicant; *Roy Filion*, *Laura Karabulut*, *Gord Duggan*, and *George Scott* appeared for the responding party; *Donald K. Eady* appeared for General Presidents' Maintenance Committee for Canada; no one appeared on behalf of the Electrical Contractors Association of Ontario

DECISION OF THE BOARD; October 27, 2010

1. This is an application under section 133 of the *Labour Relations Act, 1995* (the "Act"). This matter was heard by a differently constituted panel of the Board and determined by way of decision dated November 15, 2006 with further reasons provided on February 1, 2007. Following an application for judicial review, the Board's decision was set aside by the Ontario Court of Appeal in *Jacobs Catalytic Ltd. v. International Brotherhood of Electrical Workers, Local 353*, 2009 ONCA 749 (CanLII) on the basis that the Board's reasons were inadequate. The matter was referred back to the Board to be reheard by a differently constituted panel.

2. The International Brotherhood of Electrical Workers, Local 353 (the "union") alleges that fire restoration work performed by Jacobs Catalytic Ltd. ("Jacobs") in the Hydrotreater Unit at the White Oils Plant at the Petro-Canada site was construction work that was required to be performed under the provisions of the ICI Construction Industry Principal Agreement ("Principal Agreement"). Jacobs takes the position that the fire restoration work was governed by the General Presidents' Maintenance Agreement (the "Maintenance Agreement") and in particular article 6.703 thereof dealing with localized fire damage. In the alternative, Jacobs argues that the union is estopped from enforcing the ICI Agreement.

3. At the Board's suggestion, which was based on the belief that doing so would expedite the determination of this matter, the parties agreed to have the Board first determine whether, assuming without finding the fire restoration work to be construction work, the union was estopped from enforcing the Principal Agreement. Accordingly, this decision assumes the fire restoration work to be construction work and deals only with the issue as to whether the union is estopped from enforcing the Principal Agreement in respect of this work.

4. The parties entered into the following partial agreed statement of facts:

Whereas the International Brotherhood of Electrical Workers, Local 353 ("Local 353") filed a grievance having Board File No. 3737-05-G that is the subject of this Arbitration hearing;

Whereas the parties agree to submit this Partial Agreed Statement of Facts with respect to File No. 3737-05-G on the understanding and agreement of the parties that, in doing so, they are not to be taken as agreeing to the relevancy of any particular facts set out and are not precluded from leading evidence at the hearing on other facts so long as such evidence is not inconsistent with the agreed facts set out in this Statement;

Therefore, the parties agree to the following material facts for the purposes of the hearing in Board File No: 3737-05-G:

The Parties and Collective Agreements

1. Jacobs Industrial Services Ltd. ("Jacobs"), formerly known as Jacobs Catalytic Ltd., is primarily engaged in the business of plant maintenance.

2. Jacobs and Local 353 are party to two collective agreements:

(a) The General Presidents' Maintenance Agreement ("GPMA") for maintenance by contract in Canada, generally referred to as the GPMA. The GPMA in question is between Jacobs and the General Presidents' Maintenance

Committee for Canada ("GPMC") on behalf of thirteen International Unions of the AFL-CIO and is applicable to the Petro-Canada Products Ltd. ("Petro-Canada"), Mississauga Refinery in Mississauga, Ontario ("the Petro-Canada site"). A copy of the GPMA is attached as Exhibit "A". A copy of the Constitution and By-Laws of the General Presidents' Committee for Plant Maintenance in Canada is attached as Exhibit "B".

(b) A Collective Agreement between the Electrical Trade Bargaining Agency of the Electrical Contractors Association of Ontario ("ECAO") and the International Brotherhood of Electrical Workers and the IBEW Construction Council of Ontario. That Collective Agreement, titled "Principal Agreement", is a Provincial Agreement as defined in section 151(1) of the *Labour Relations Act*, 1995, S.O. 1995, c. 1, Sch. A ("*LRA*") and pertains to those employees employed in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario (the "Principal Agreement"). A copy of the Principal Agreement is attached as Exhibit "C". (It is the position of Local 353 that the description of the Principal Agreement as set out in this paragraph is limited to its application to Jacobs as it relates to this particular grievance but is not intended to describe the full scope or application of the Principal Agreement).

3. Jacobs has, for many years, provided supplemental plant maintenance services at the Petro-Canada site. The vast majority of the work performed by Jacobs at the Petro-Canada site is pursuant to the GPMA.

4. The GPMA is negotiated and renewed periodically. It has been in place at the Petro-Canada site (formerly occupied by other refineries prior to Petro-Canada assuming ownership) since the 1960s.

5. At each round of negotiations for the renewal of the GPMA, Local Unions which are members of the International Unions which are parties to the GPMA, are invited to preparation meetings and are entitled to make recommendations concerning possible amendments.

6. At all material times, the GPMA in effect at the Petro Canada site was for a term commencing April 1, 2005 and ending March 31, 2008.

7. Article 6.700 of the GPMA, which has been in effect at the Petro-Canada site since at least 1974 applies to fire restoration work and provides as follows:

6.700 Fire restoration work will be administered as follows:

6.701 The restoration of a plant completely destroyed by fire is considered construction work.

6.702 The restoration of a major part of a plant including several sections which have been destroyed or damaged by fire, shall be governed by the following criteria:

(a) The removal of damaged equipment and the preparation of the damaged area to make it suitable for new equipment will be Maintenance.

(b) The installation and erection of new equipment will be Construction.

6.703 When the fire damage is localized to a given operating unit, such as a heater, distillation tower, compressor, pumphouse equipment and the like, then the restoration of same is to be considered Maintenance.

8. Article 6.800 of the GPMA provides:

6.800 The administration and interpretation of this Article is the responsibility and prerogative of the General Presidents' Committee for Contract Maintenance in Canada.

The 2006 Fire

9. On Saturday, January 7, 2006, a fire occurred in the Hydrotreater Unit ("HTU") at the White Oils Plant at the Petro-Canada site. The fire damaged, among other things, electrical components including electrical wiring, conduit, cable trays, electrical cables, instrument cables and instrumentation boxes.

10. The Petro-Canada site comprises approximately 173 hectares or approximately 18,621,565 square feet. The fire damage consumed approximately 56,000 square feet (including collateral heat damage to electrical components), which is a small fraction of the Petro-Canada site.

11. Because the HTU is an integral part of the White Oils Plant, the Plant was inoperable until the damaged components were removed and replaced. The extent of the damage to electrical components is portrayed in the following documents which are attached as Exhibits "D", "E", and "F" respectively:

- (i) a map of the Petro-Canada site entitled the Lubricants Center Plot Plan, illustrating the location of the fire damage in relation to the entire site;
- (ii) a map of the HTU; and
- (iii) a hand-sketch illustrating the extent of the fire damage prepared by one of Local 353's members.

12. Jacobs was requested by Petro-Canada to perform the fire restoration work, which Jacobs performed under Article 6.703 of the GPMA, utilizing tradespersons dispatched by various building trades unions including IBEW Local 353. Attached as Exhibits "G" and "H" are sample requests for manpower.

13. The work of Local 353 members included the removal of damaged electrical components and their replacement. The objective of the work was to restore the HTU to operating condition as soon as possible. The work included the installation of new electrical and related structures/components, piping, insulation, installation and/or re-routing of grounding and lighting. Junction boxes were installed to minimize the amount of wire to be replaced. The work also included the installation and/or re-routing of new cable tray in the Pump Alley and the High-Rise, conduits or cable throughout the area, electrical panels

and new thermocouples and sensors, as well as terminating or hooking up the cables at the panels and junction boxes.

14. There was no increase in production or capacity following the restoration process.

15. The fire restoration work commenced almost immediately and continued until the reopening of the White Oils Plant in early March 2006.

The Grievance

16. By grievance dated January 16, 2006, IBEW Local 353 claimed that Jacobs should have applied the Principal Agreement to the work in question, claiming that it was construction work and therefore not properly performed under the GPMA. The grievance was referred to the Board pursuant to section 133 of the *LRA*.

17. The grievance alleged that Jacobs had failed or refused to apply the Principal Agreement to restoration work arising out of localized fire damage caused by a fire which occurred at the Petro-Canada site on or about January 7, 2006. Attached as Exhibits "I" and "J" are copies of the Grievance and Section 133 Referral.

18. In response to the grievance and section 133 Referral, Jacobs asserted that the work was properly performed pursuant to the GPMA. In particular, Jacobs asserted that it was fire restoration work pertaining to fire damage which was localized to the HTU and was therefore properly performed pursuant to Article 6.703 of the GPMA. Jacobs also relied on the doctrine of estoppel, based on past practice in similar circumstances at the Petro-Canada site and negotiation history relating to the GPMA. Jacobs' Response to the Section 133 Referral is attached as Exhibit "K". Attached as Exhibit "L" is a copy of a letter dated March 23, 2006 from counsel for Jacobs to counsel for Local 353 confirming Jacobs' reliance on the doctrine of estoppel.

19. The GPMC supports the position of Jacobs. Attached as Exhibit "M" is the intervention of the GPMC.

Previous Fires

20. In 1999, there were two consecutive and overlapping fires at the Petro-Canada site. The first fire started in the Hydrobon Unit. Before the restoration work from that fire was completed, there was a second fire in the Hydrogen Unit. Attached as Exhibit "N" is a copy of an internal Petro-Canada memorandum dated February 12, 1999 containing an investigation of the 1999 fires.

21. All of the work relating to the removal and replacement of electrical components arising out of the 1999 fires was performed by Local 353 members pursuant to the GPMA, without a grievance or any other form of complaint. Although there is information in Exhibit "N" to suggest that the magnitude of the damage caused by each of the 1999 fires was substantial, there is no document to indicate the precise planned labour requirements as there is for the 2003 and 2006 fires (see Exhibit "O" referred to in paragraph 22).

22. In 2003, there was a fire caused by an explosion in the HTU compressor building. The amount of damage and the extent of work to remove and replace damaged electrical components were substantially similar to that in the 2006 fire. That work was performed by members of Local 353 pursuant to the GPMA. Attached as Exhibit "O" is an internal Petro-Canada email dated June 30, 2006 illustrating the similarity of the planned labour requirements for the 2003 and 2006 fires.

23. After the restoration work was commenced with respect to the 2003 fire, Local 353 Business Agent, Barry Stevens, inquired as to whether the work was being properly done under the GPMA. Mr. Stevens' inquiry was investigated on behalf of the GPMC by Tom McGreevey, International Representative for the IBEW. Mr. McGreevey concluded that the work was covered under Article 6.703 of the GPMA. Attached as Exhibit "P" is a copy of a letter dated November 5, 2003 from Steve Smillie to Barry Stevens, confirming Mr. McGreevey's conclusion. No further action was taken by Local 353 concerning the matter.

24. On March 3, 2005, prior to the commencement of negotiations for the renewal of the GPMA in 2005, Messrs. Stevens and McGreevey attended a planning meeting of the GPMC at which time Mr. Stevens and representatives of other Local Unions were given the opportunity to make recommendations concerning amendments to the GPMA. Mr. Stevens made no recommendations for change. Nor was any reference made by Mr. Stevens or anyone else to Article 6.703. An attendance sheet containing the names of individuals who attended the meeting is attached as Exhibit "Q".

25. Similarly, no proposals or issues relating to Article 6.703 were raised by representatives of Local 353 or any other Local Union during meetings pertaining to the renewal of the GPMA in 1998 and 2002. Attached as Exhibit "R" is a copy of a list of recent renewals of the GPMA at various projects in Ontario.

26. Jacobs relied on the past practice referred to above, as well as the wording of Article 6.703 in deciding that the restoration work relating to the 2006 fire should be performed pursuant to the GPMA.

27. The relevant IBEW designation orders are attached hereto as Exhibit "S".

5. The union called Cameron Commandant as a witness. Mr. Commandant is a Business Manager for the union. He became responsible for the Petro-Canada site in or about 2004. The GPMA to which Jacobs is a party that applies to the Petro-Canada site is the only GPMA in Local 353's jurisdiction. This was Mr. Commandant's first experience with a GPMA.

6. Mr. Commandant testified that there was a fire at the Petro-Canada site on Saturday, January 7, 2006. Mr. Commandant indicated that he placed a telephone call to George Scott, the project superintendent for Jacobs at the Petro-Canada facility in Mississauga on Monday, January 9, 2006 to inquire as to whether anyone was hurt in the fire and to offer the assistance of Local 353. The next day, Mr. Commandant again contacted Mr. Scott. Mr. Commandant had received a request for manpower from Jacobs on which it was indicated that the fire restoration work was to be performed under the terms of the GPMA. Mr. Commandant asked Mr. Scott if the work was being done under the Principal Agreement. When Mr. Scott replied that the work was maintenance work Mr. Commandant told Mr. Scott that he would be sending him a grievance as

Mr. Commandant believed the work was construction work. A grievance was sent to Mr. Scott on January 16, 2006. Mr. Commandant acknowledged that he considered the fire restoration work to be construction work as it involved redoing work that had only recently been performed and in respect of which there was an outstanding IBEW grievance asserting that the work ought to have been performed under the terms of the Principal Agreement. In Mr. Commandant's mind, if the initial performance of the work was construction work, the re-performance of that work after its destruction by a fire would also be construction work.

7. As indicated above in the partial agreed statement of facts, there was a fire at the Petro-Canada site in the 2003. At the time of that fire the Local 353 Business Agent responsible for the Petro-Canada site was Barry Stevens. As set out at paragraph 23 of the agreed statement of facts, Mr. Stevens raised the issue of whether the 2003 fire restoration work was being properly performed under the GPMA. The issue was looked into by the IBEW International President Tom McGreevey. Mr. McGreevey concluded that the 2003 fire restoration work was maintenance work. A letter was written by Mr. Smillie, the Executive Director of the GPC, to Mr. Stevens, advising Mr. Stevens of Mr. McGreevey's conclusion. Jacobs was copied on this letter. Mr. Commandant testified that Mr. Stevens was available to testify in this matter however a decision had been made not to ask him to do so. At the time of the 2006 fire, Mr. Commandant had no knowledge as to how the 2003 fire restoration work had been performed and was not aware of Mr. Smillie's letter until it was entered as an exhibit in this matter.

8. Mr. Commandant was the Business Manager responsible for the Petro-Canada site during two rounds of collective bargaining for the renewal of the GPMA. The first round of bargaining was for the negotiations leading to the 2005-2008 GPMA and the second round of bargaining was for the negotiations leading to the 2008-2011 GPMA. Mr. Commandant did not attend the first round of bargaining on behalf of the IBEW. Mr. Stevens attended this round of bargaining. Mr. Commandant was in attendance at the second round of bargaining and at the time of the negotiations was aware that article 6.703 was in the agreement and that proceedings were ongoing before the Board and the courts. Mr. Commandant agrees that no proposal was tabled during the collective bargaining negotiations to change the language of article 6.703 and the language remains in the GPMA unchanged.

9. Mr. Commandant testified that he understands that the number of electricians employed by Jacobs on the Petro-Canada job site at any time is determined solely by Petro-Canada and not by Jacobs. Mr. Commandant further testified that it is his understanding that Petro-Canada has a number of its own electricians on the job site who are members of the CEP. In addition, Mr. Commandant is aware that Petro-Canada has other contractors on the job site from time to time doing electrical work. Some of those contractors are non-union and as such, Jacobs is vulnerable to competition from non-union contractors on the Petro-Canada site. Mr. Commandant recognizes that Petro Canada could cancel its contract with Jacobs.

10. Gord Duggan was called by Jacobs a witness. Mr. Duggan is employed by Jacobs as the General Manager for Eastern Canada. He has been employed by Jacobs or one of its many predecessor companies since at least 1981. His responsibilities have included the Petro-Canada Mississauga facility since 1990.

11. Mr. Duggan explained that a predecessor company of Jacobs by the name of Suncor Construction was instrumental in the development of the first GPMA. Suncor thought that if the

facility was built with unionized building trades, why not use unionized building trades to maintain the facility. They constructed a business plan whereby Suncor would enter into arrangements with facility owners to go into the facility and perform plant maintenance work using unionized building trades members. Mr. Duggan explained that today, in-plant maintenance work using unionized building trades is Jacobs' entire business. Today Jacobs employs 4,000 – 5,000 building trades members in a number of plants across Canada under the terms of the GPMA. Approximately 15 million hours are worked by Jacobs' employees under the GPMA each year. Jacobs enters into long-term contracts with the facility owners. Jacobs is currently the largest employer of employees under the GPMA and a representative of Jacobs serves as the spokesperson at the GPMA collective bargaining negotiations.

12. According to Mr. Duggan, Jacobs has had a GPMA with Petro-Canada at the Mississauga facility since 1983. Mr. Duggan explained that the Petro-Canada facility is used to manufacture lubricants such as car oil. Petro-Canada has its own in-house maintenance workforce comprised of CEP members. These individuals do the same type of maintenance work as is performed by Jacobs.

13. Mr. Duggan testified that he was involved in the negotiations for the renewal of the GPMA resulting in the 2005-2008 agreement. Mr. Duggan stated that he was a spokesperson for the contractors during the negotiations as Jacobs has the most hours worked and most employees working under the GPMA. Mr. Duggan confirmed that there was no issue raised during the collective bargaining negotiations concerning the language of article 6.703. Mr. Duggan testified that he served in the same capacity during the collective bargaining negotiations leading to the 2008-2011 collective agreement and that no issue was raised by anyone during that round of collective bargaining concerning article 6.703.

14. Under the terms of the GPMA, the hourly wage rate is one dollar an hour less than under the Principal Agreement. In addition, overtime is paid only after 40 hours in a week whereas the Principal Agreement provides for overtime pay after only 36 hours. Union members working under the GPMA are not entitled to be paid travel time as they would be under the Principal Agreement. Finally, the GPMA has a no strike/no lockout clause thereby guaranteeing stability to an operating facility. Mr. Duggan estimated the cost differential between applying the Principal Agreement versus the GPMA to the work in issue in this case to be \$635,000.

15. Mr. Duggan explained the process that is followed when there is a question as to whether or not work to be performed in the Petro-Canada facility is maintenance or construction. Mr. Duggan indicated that Petro-Canada gives Jacobs a description of the work to be performed. Jacobs looks at the description and considers whether the work falls within any of the GPMA definitions of maintenance work. If Jacobs feels that they are in a grey area they will contact the General Presidents' Committee ("GPC"), which is a committee established under article 6.08 of the GPMA that is charged with the responsibility of determining whether or not work falls within the scope of the GPMA. The GPC will contact the various unions to discuss the matter. If it is determined that the work is construction work the terms of the Principal Agreement will be applied.

16. Mr. Duggan testified that he was familiar with the fire that had occurred in 2003. He was aware that Mr. Stevens had come to the job site and walked around with Mr. McGreevey. Mr.

Duggan later received a copy of Mr. Smillie's letter stating that Mr. McGreevey concluded that the work was maintenance.

17. Mr. Duggan provided information on the 2006 fire. The fire occurred in an area of the Petro-Canada facility where a project known as the chloride mitigation project had just been completed. A grievance had been filed by the union in which it was asserted that the work performed in connection with the chloride mitigation project was construction work. The facility had been shut down in order for work in connection with the chloride mitigation project to be performed and was scheduled to start up again imminently. The fire was started as a result of an error that was made by a pipefitter employed by Jacobs. As a result of the fire, the start up of the facility had to be delayed in order for the fire restoration work to be completed. The total cost of the fire restoration work was roughly \$25 million.

18. Mr. Duggan testified that the fire restoration work began on the very day that the fire had occurred. He stated that there was no question in his mind as to which collective agreement would apply. He knew that the 2003 fire restoration work had been performed under the GPMA and saw no reason why this fire restoration work would not similarly be performed under the GPMA. Mr. Duggan indicated that the same type of damage was involved in both fires and the 2006 fire occurred only steps away from where the 2003 fire had occurred.

19. Mr. Duggan testified that Petro-Canada carried an insurance policy to cover the cost of the damage, however, such policy had a \$5 million deductible. Mr. Duggan explained that Jacobs has to pay a fee to Petro-Canada if they cause damage to the facility. In this case, Jacobs paid Petro-Canada \$5 million.

20. Jacobs did not tell Petro-Canada that the union had filed a grievance alleging that the fire restoration work was construction work that ought to be performed under the terms of the Principal Agreement. According to Mr. Duggan he never even considered going to Petro-Canada and suggesting that the work be done under the Principal Agreement. Mr. Duggan indicated that Petro-Canada knows the terms of the GPMA as well as Jacobs does and knows that article 6.703 provides that localized fire restoration work falls within the scope of the GPMA. Mr. Duggan stated that there was no doubt that the Petro-Canada plant manager would say that the work should be done under the GPMA. Mr. Duggan speculated that, had they decided to allow the grievance and perform the work under the Principal Agreement, it would have been "suicidal" for Jacobs. Mr. Duggan stated that "we would be off the site and never back again."

21. Finally, Mr. Duggan testified as to the contractual arrangements in place between Jacobs and Petro-Canada. Jacobs and Petro-Canada are parties to an indefinite term agreement that is terminable by either party upon the giving of notice. All of the work performed by Jacobs for Petro-Canada at the Mississauga facility is performed under this one agreement. New agreements are not entered into by the parties for each project. Essentially, Jacobs is compensated by Petro-Canada on a cost plus basis. Jacobs is expected under the terms of this agreement to bring value to the table and ensure that costs are contained. The 2006 fire restoration work was performed by Jacobs under the terms of this indefinite agreement.

22. There is a fairly considerable body of Board jurisprudence that discusses the issue of whether work is construction or maintenance. The issue arises, and is an important one to the construction industry, as a result of the manner in which ICI construction bargaining rights are

structured by the Act. The Act creates a level playing field for all ICI construction contractors by legislating that there can be only one ICI construction collective agreement per trade and that any other agreement entered into that covers ICI construction work is null and void (see section 162). It is as a result of this provision that the issue of what is construction work and what is maintenance work frequently arises.

23. In the case of *The Master Insulators' Association of Ontario Inc.*, [1980] OLRB Rep Oct. 1477, the Board determined that, to the extent that maintenance agreements such as the GPMA purport to cover work in the ICI sector of the construction industry, they are in violation of what is now section 162 of the Act and null and void. Catalytic Enterprises Limited, a predecessor of Jacobs, was an intervenor in the proceedings. Arguments advanced by Catalytic Enterprises Limited in support of an argument that work performed within an industrial plant ought not to be considered to be construction work are set out at paragraph 26 of the decision. The Board's conclusion in *Master Insulators'* to the effect that any provisions of a maintenance agreement that purport to apply to ICI construction work are null and void has been consistently applied by the Board for the past 30 years.

24. In *Master Insulators'*, the Board also articulated a test for differentiating between construction and maintenance work in the context of work performed by a number of in-plant maintenance contractors including Jacobs' predecessor, Catalytic Enterprises Limited:

28. With the exception of the work performed at the premises of Fearman and the work on a new emergency shower and minor work in a change house at Stelco, the work performed by the employers who were named in this complaint was essentially similar in nature. In our view, the work at the premises of Fearman, which involved an addition to an existing facility and involved both relocation of producing units and the expansion of existing capacity, was clearly new construction. Similarly, the work on the emergency shower and change house at Stelco was an addition for the safety and comfort of Stelco's employees and represented new construction. This work is clearly within the industrial, commercial and institutional sector of the construction industry. The rest of the work referred to in the complaint was, for the most part, clearly work which sustained and maintained an operating facility and enabled that facility either to operate efficiently or to attain its designed or production capacity and it to be regarded as maintenance work. Maintenance work is to be distinguished from construction work which involves the addition to an existing facility or which will increase the designed or production capacity of an existing facility. However, in so far as there was work of new construction, which was purportedly done under the maintenance agreement, it was a violation of section 134a(1) of the Act.

29. Maintenance work performed by the employers who were named in this complaint is in reality part and parcel of the production and maintenance operations of the industrial clients for whom the work is performed. These industrial clients may, and frequently do, perform their own maintenance work with their own employees who are included in their own industrial bargaining units. In the context of the work affected by this complaint "maintenance" is difficult to distinguish from "repair". In our view, it is a question of the context of any given work and the degree of addition or subtraction of such work to an existing system or part of a system. Where the work assists in preserving the functioning of a system or part of a system, such work is maintenance work.

Where the work is necessary to restore a system or part of a system which has ceased to function or function economically, such work is repair work. "Maintenance" and "repair" are not mutually exclusive concepts, and lack of adequate maintenance will surely produce a situation where repair becomes inevitable. In our view, the performance of adequate and timely, maintenance forestalls or reduces the requirement for repair.

25. As the foregoing quote indicates, the work performed in order to build a system is construction work. Such work is referred to as "new" construction. After a system has been built there will likely be a need to perform work on the system in order to keep it in good repair and operating efficiently. Such work is considered to be maintenance work. If the system ceases to function, the work performed in order to restore the system is considered to be construction work. Similarly, if work is performed on a system in order to increase the operating capacity of a system above and beyond its capacity at the time of its initial construction, the work performed is construction work. Again, the distinction between construction and maintenance work set out in the *Master Insulators'* decision has been consistently applied by the Board for the past three decades.

26. In 1986, in the case of *Inscan Contractors (Ontario) Inc.*, [1986] OLRB Rep. May 640, the Board determined a grievance in which it was alleged that the employer applied the incorrect collective agreement when it applied its maintenance agreement, instead of the provincial ICI construction agreement, to the repair of damage resulting from an explosion and fire at the Clarkson Refinery of Gulf Canada Limited. The work performed by the employer arose out of fire damage to the hydrotreater unit of the Clarkson Refinery. The hydrotreater unit represented only 2% of the physical area of the total refinery and only 15% of the unit was damaged by the fire. The area of the hydrotreater unit affected by the fire was, at most, 12,000 square feet. The day before the fire, both stages to the unit's operation were operational. The day after the fire, neither was operational. The value of the contract was approximately \$378,000. Performance of the work in issue took less than 11 days.

27. While the maintenance agreement under consideration in *Inscan Contractors* was not the GPMA, the GPMA was placed before the Board and is referred to in the Board's decision in a number of places. At paragraph 8, the decision indicates that the GPMA between Stern's Catalytic Ltd., a predecessor of Jacob's Catalytic, in respect of Gulf's Clarkson Refinery was placed before the Board as an exhibit. Further, at paragraph 17 of the decision, the Board reproduces in full the fire restoration provisions of the GPMA. It would appear that the employer advanced an argument that its maintenance agreement was somehow linked to the GPMA (see paragraph 25). Finally, at paragraph 9, the Board notes that the employer made its decision to perform the work under its maintenance agreement based in part on information that companies like Stern's Catalytic Ltd. had performed fire restoration work in the past under the GPMA.

28. After a review of the Board's jurisprudence concerning what constitutes maintenance, and is therefore not construction, the Board noted at paragraph 21 that the definition of repair work (which is construction work) is work necessary to restore a system or part of a system which has ceased to function or function economically. The Board made note of the fact that both stages of the hydrotreater unit were producing product the day before the fire and incapable of producing it the day after. Thus, the Board concluded that the work performed by the employer had the effect of restoring normal function to both stages of the hydrotreater unit and "was work in the

construction industry as defined in section 1(1)(f) of the Act and clearly is work within the industrial, commercial and institutional sector of the industry."

29. The Board then succinctly stated the impact of its determination that the work was construction industry work:

22. The Association is a designated employer bargaining agency under the province-wide provisions of the Act and Local 95 and the International together are a designated employee bargaining agency. By operation of section 146(2) of the Act the only agreement or arrangement which they can make respecting work in the ICI sector of the construction industry is a provincial agreement as defined in clause (e) of section 137(1) of the Act. It is undisputed that the construction agreement includes work in the ICI sector and is a provincial agreement within that definition. Therefore, it is the only collective agreement which the Association and Local 95 can have between them respecting work in the ICI sector. It follows that the maintenance agreement cannot be an agreement respecting work in the ICI sector. Thus, Inscan was bound to apply [the] construction agreement to the work it performed at Gulf. To the extent that it failed to do so, Inscan has violated the construction (provincial) agreement between The Master Insulators' Association of Ontario Inc. and the International Association of Heat and Frost Insulators and Asbestos Workers, and International Heat and Frost Insulators and Asbestos Workers, Local 95.

30. The Board went on to consider the employer's alternative argument that the union was estopped from enforcing the Provincial ICI construction agreement:

24. Counsel's argument that Local 95 is estopped from claiming damages for Inscan's breach of the construction agreement, as the Board understands it, may be summarized as follows. Counsel referred the Board to two reported decisions respecting application of the concept of estoppel: *New Vision Construction Limited*, [1983] OLRB Rep. Mar. 428 and *Losereit Sales and Services Ltd.* [1983] OLRB Rep. Apr. 569. Both decisions deal with referrals of grievances under section 124 of the Act. In *Losereit* the Board adopted the three elements essential for the application of promissory estoppel at common law. They are (1) a finding that there has been a representation by words or conduct intended to be relied on by the party to which the representation was directed; (2) some reliance on the representation in the form of some action or inaction; and, (3) detriment resulting from reliance on the representation. The Board also adopted the proposition from arbitral jurisprudence that "acquiescence or inaction can have the effect of a 'representation'.....". Counsel contends that there was a representation to Inscan that fire damage restoration could be performed at the wages and working conditions contained in the maintenance agreement and the representation was created by a number of factors: the existence of the maintenance agreement and its link to the General Presidents' Agreement which deals with fire restoration work; the fact that Inscan, the Association, its member contractors, Local 95 and its officials were *ad idem* when Inscan was on the Gulf project, that fire damage restoration work was done under the terms and conditions of the maintenance agreement; Local 95's "inaction" for more than two months during which it failed to assert a claim that the work should be done under the terms and conditions of the construction agreement; and the past practice of contractors bound to the construction and maintenance agreements

doing fire damage restoration work under the terms and conditions of the maintenance agreement.

25. The Board does not agree with counsel that the mere existence of the maintenance agreement, whether or not linked to the Presidents' Agreement and its definition of fire restoration work contained in the extract quoted above from that agreement, is sufficient to establish the representation counsel seeks to establish without some evidence that the maintenance agreement has been applied to the work in question. Nor does the Board share counsel's view that the evidence establishes that Local 95 and its officials were *ad idem* with Inscan and others that fire damage restoration work was done under the terms of the maintenance agreement. Taking the evidence at its highest, it still shows the officers of Local 95 to have been uncertain about which agreement applied to the work. With respect to Local 95's failure during more than two months to assert a claim that the work should be done under the terms and conditions of the construction agreement, counsel submits that this "inaction" constitutes acquiescence in a practice. Clause 6.04 of the grievance procedure in the construction agreement gives the parties bound by it 90 days within which to refer a grievance under section 124 of the Act. In that circumstance it cannot be said that a party which asserts a claim within the time limit has acquiesced in a practice because it has used that time to decide whether it had a claim. That leaves the alleged past practice of doing fire damage repair under the terms and conditions of the maintenance agreement.

26. The only specific evidence before the Board of a past practice of applying maintenance terms and conditions to fire repair work is that of Hebert's with respect to the four fires at Imperial Oil Limited's Sarnia refinery. There is no evidence that Inscan previously had done such work under those terms. Beermink's evidence is limited to a general claim that fire restoration work has been performed under the maintenance agreement since the first agreement was signed in 1979. That may be so, but, if it is, the only specific evidence in support of the claim is the evidence of the four fires in Sarnia. While it might be arguable that there has been an area practice in Sarnia of performing the work on maintenance conditions, it stops well short of demonstrating anything more widespread. It may also be that there have not been many fire restoration jobs to do and that the four examples are representative of a past practice. Again, if that is the case, the Board does not have that evidence before it. The caution with which arbitrators have applied estoppel in circumstances where an established work practice forms the basis of the promise or representation places a substantial onus on the party seeking to establish the estoppel to adduce evidence which clearly establishes the practice. See Brown and Beatty, *Canadian Labour Arbitration* (2d ed Aurora: Canada Law Book Limited, 1984) at page 86. The evidence before the Board does not establish clearly that there is a past practice amongst contractors bound to the construction and maintenance agreements between the Association, the International and Local 95 of applying maintenance terms and conditions to fire damage repair work, or a practice amongst Toronto area contractors, or that Inscan has a practice. Therefore, in the Board's view, the facts of this case do not establish the representation essential to the application of estoppel and the doctrine is not applicable to this application.

31. It is also noteworthy that the very parties to this matter have been to the Board on a number of occasions in connection with disputes as to whether work is to be performed under the

Principal Agreement or the GPMA in connection with work performed at the very facility at which the work in issue was performed. In the case of *Delta Catalytic Industrial Services Limited*, [1996] OLRB Rep. March/April 233 the union sought to file a grievance with the Board in which it was alleged that work performed by Delta Catalytic Industrial Services Limited, a predecessor of Jacobs Catalytic, in the Petro-Canada facility was construction work and thus had to be performed under the Principal Agreement. The Board declined to entertain the grievance because the union had previously referred the dispute to a panel of the General Presidents Maintenance Committee ("GPMC") and obtained a decision. In *Delta Catalytic Industrial Services Ltd.*, [1997] OLRB Rep. Nov./Dec. 979 the union filed a grievance with the Board in which it was alleged that eight different projects performed by the employer in the Petro-Canada facility were construction work and thus had to be performed under the Principal Agreement. The Board ruled that it was not prepared to give significant weight to a decision of the GPMC regarding the disputed work and went on to determine that seven of the eight projects involved construction work.

32. Predecessors of Jacobs have also been involved in grievances before the Board filed by other trade unions in which the issue raised was whether or not work performed in a Petro-Canada facility was maintenance or construction (see by way of example: *Delta Catalytic Industrial Services Ltd.*, [2001] OLRB Rep. July/Aug. 983).

33. Jacobs and the GPMC submit that, assuming the work at issue herein to be construction work, the union is estopped from enforcing the terms of the Principal Agreement. In order to found an estoppel, there must be: (1) a finding that there has been a representation by words or conduct intended to be relied on by the party to which the representation was directed; (2) some reliance on the representation in the form of some action or inaction; and (3) detriment resulting from reliance on the representation (see: *Creative Design and Improvement Inc.*, [2004] OLRB Rep. July 684).

34. Jacobs relies on four facts in support of its position that there has been a representation on the part of the union to the effect that it will not enforce the Principal Agreement in respect of localized fire restoration work of the nature in issue here. First, Jacobs relies on the fact that in 1999 and 2003 the union permitted fire restoration work to be performed under the terms of the GPMA. While little is known about the 1999 fires the documents suggest that the damage caused was significant. It is agreed that work performed as a result of the 2003 fire was substantially the same as the work in issue here. Second, Jacobs relies on fact that the IBEW International President, Mr. McGreevey, was of the opinion that the GPMA applied to the 2003 fire restoration work. Thirdly, Jacobs relies on the language of article 6.703 of the GPMA which defines localized fire restoration as maintenance work. Finally, Jacobs relies on the fact that the union did not seek to amend the language of article 6.703 during the negotiations leading to the 2005-2008 or 2008-2011 agreements.

35. I do not accept that the language of article 6.703 of the GPMA which defines localized fire restoration as maintenance work is, in and of itself, a representation by the union. The Board's case law involving these very parties clearly states that, to the extent a maintenance agreement purports to cover construction work, it is null and void. The parties to the GPMA know that, to the extent the GPMA applies to construction work, the arrangement is tenuous and depends upon the continued cooperation of all of the parties to the agreement. If one of the building trades unions challenges the performance of work under the GPMA, and refers a grievance to the Board, the parties know that the Board will apply the definition of "construction" as it appears in the Act

and require all construction work to be performed under the terms of the applicable ICI provincial agreement.

36. I do not accept that the fact that the union did not seek to amend the language of article 6.703 during the negotiations leading to the 2005-2008 or 2008-2011 agreements constitutes a representation to Jacobs that it would not enforce the Principal Agreement. The round of bargaining leading to the 2008-2011 agreement post dates the events in issue herein and is thus irrelevant. Given that the article, in so far as it applies to construction work, is legally null and void, and all of the parties to this matter must reasonably have known such, there was no reason for the union to have sought to amend the article. It was, in the absence of any amendments, inapplicable to construction industry work.

37. I am, however, persuaded that the past practice evidence of fire restoration work in connection with two fires in 1999 and one fire in 2003 having been performed by union members under the GPMA, combined with the opinion of the IBEW International President, Mr. McGreevey, that the GPMA applied to the 2003 fire restoration work, constitutes a representation by the union that it would not enforce the Principal Agreement with respect to localized fire restoration work.

38. I turn then to the question of whether Jacobs relied on this representation in the form of some action or inaction. Unlike the facts in *Jacobs Catalytic Industrial Limited*, 2007 CanLII 52376 (ON L.R.B.) Jacobs did not advise Petro-Canada that it had the union's agreement that the work could be done under the GPMA. I do not accept that the language of the GPMA amounts to Jacobs representing to Petro-Canada that the work in issue could be done under the GPMA. Both Jacobs and Petro-Canada were fully aware of the fact that the Board has ruled that a maintenance agreement cannot apply to construction work and, to the extent that it does, it is null and void. Unlike the facts of *Jacobs Catalytic Industrial Limited*, Jacobs did not enter into a contract with Petro-Canada, nor negotiate its rates with Petro-Canada, based on the representation. In the absence of Jacobs having identified any specific action or inaction taken on its part based on the union's representation, it is my determination that Jacobs did not do so.

39. While my finding that Jacobs did not take, or refrain from taking, action in reliance on the representation is sufficient to conclude that the union is not estopped from enforcing the terms of the Principal Agreement, I will also consider whether Jacobs has established that it would suffer a detriment if the union were permitted to enforce the terms of the Principal Agreement.

40. Jacobs argues that it would have been very bad business on its part for it to have told Petro-Canada that the fire restoration work would be performed under the Principal Agreement when the GPMA so clearly covered the work in issue and substantially similar work had been performed under the terms of the GPMA in 1999 and 2003. Jacobs argues that, as a result of the language of article 6.703, and the union's past conduct, it was impossible for it to do the work under the terms of the Principal Agreement without losing Petro-Canada as a client. Jacobs did not argue that it would suffer any financial detriment as a result of having to apply the Principal Agreement to the work in issue.

41. The grievance did not come at a good time for Jacobs. The fire was caused by the actions of an employee of Jacobs. Petro-Canada's operations were severely disrupted by the fire. Jacobs was held responsible for the fire and had to reimburse Petro-Canada its \$5 million dollar

deductible under its insurance policy. Jacobs' relationship with Petro-Canada had suffered a setback. However, as regrettable as those circumstances may be, they are not relevant to a determination as to whether or not Jacobs would suffer a detriment if the union were permitted to enforce the terms of the Principal Agreement.

42. I am not persuaded that Jacobs has established that it would suffer a detriment if the union were permitted to enforce the terms of the Principal Agreement. As indicated above, Jacobs did not advise Petro-Canada that it had obtained the union's agreement that the work could be done under the GPMA. Jacobs did not negotiate its agreement with Petro-Canada for the performance of the work based on the representation that the very work in issue could be performed under the GPMA. Rather, in this case, Jacobs said nothing to Petro-Canada and did not even advise Petro-Canada when the union told Jacobs that a grievance would be filed asserting that the work had to be done under the Principal Agreement.

43. The only evidence adduced by Jacobs in support of its assertion that its relationship with Petro-Canada would be irretrievably harmed if it the union were permitted to enforce the terms of the Principal Agreement is the evidence of Mr. Duggan to the effect that he knew such would be the result. However, the evidence establishes that Jacobs did not tell Petro-Canada of the union's position. As such, there is no evidence as to Petro-Canada's actual reaction to being told of the union's position. Mr. Duggan's evidence that Jacobs would lose Petro-Canada as a client if it were to do the work under the Principal Agreement is speculation on his part.

44. Further, I am not persuaded that it can be assumed that Petro-Canada would have terminated its contract with Jacobs based solely on the fact that Jacobs was required to apply the Principal Agreement to the work in issue. On the facts of this case, the union had represented to Jacobs that it would allow localized fire restoration work to be done under the GPMA and then, without advance notice, at the very commencement of the work in issue, reversed its position. It certainly was not Jacobs' fault that the union acted as it did. Presumably the union would have taken the position that the work in issue was construction work regardless of the identity of the contractor.

45. Finally, in the absence of facts such as those in *Jacobs Catalytic Industrial Limited*, I do not accept that the fact that Petro-Canada would terminate its contract with Jacobs if Jacobs were required to apply the correct collective agreement and pay the appropriate rates can constitute a "detriment" upon which an estoppel could be found. A union's ability to enforce its collective agreement does not depend on the client's willingness to accept the true characterization of the work in issue and the application of the law to that work. If Petro-Canada were to terminate its contract with Jacobs solely due to the work in issue being found to be construction work in respect of which the Principal Agreement applies, such would be lamentable, but it cannot mean that the union is precluded from enforcing the terms of its collective agreement.

46. Accordingly, I do not accept that Jacobs relied on the union's representation by taking action or refraining from taking action nor do I accept that Jacobs would suffer a detriment if the union were to be permitted to enforce the terms of the Principal Agreement to the work in issue.

47. For the foregoing reasons, I am not persuaded that the union is estopped from enforcing the terms of the Principal Agreement. Having regard to this finding it is necessary for the Board to determine if any or all of the work in dispute is construction work.

48. This matter is hereby referred to the Registrar to schedule for a day of hearing. I am seized.

1451-07-R; 1483-07-R; 1484-07-U Labourers' International Union of North America, Ontario Provincial District Council, Applicant v. **Mirtren Contractors Limited** and Mirtren Construction Limited, Responding Parties v. Construction Workers Local 52, affiliated with the Christian Labour Association of Canada, Intervenor; Labourers' International Union of North America, Ontario Provincial District Council, Applicant v. Mirtren Contractors Limited, Mirtren Construction Limited and Mirtren Builders Limited, Responding Parties v. Construction Workers Local 52 affiliated with Christian Labour Association of Canada, Intervenor; Labourers' International Union of North America, Ontario Provincial District Council, Applicant v. Mirtren Contractors Limited, Responding Party

Certification – Construction Industry – Related Employer – LIUNA sought to certify the employees of Mirtren Contractors Limited and shortly thereafter filed an application for relief under the related employer provision of the Act, citing also Mirtren Construction Limited and Mirtren Builders Ltd. (claim against latter company dropped) – The employees of Mirtren Contractors were represented by CLAC – Contractors asserted it had no employees in the bargaining unit sought by LIUNA – The Board found that although both Contractors and Construction were owned by one individual, they carried on business in two distinct divisions, geographically apart, with each division reporting to different management for operational and labour relations purposes – The Board dismissed the application for a declaration that the companies were related but, given there was no prejudice to Construction, was satisfied that it should invoke s. 112 to find that the responding party had been incorrectly named in the application for certification – Matters continue

BEFORE: *Harry Freedman*, Vice-Chair, and Board Members *Barry Roberts* and *Richard Baxter*.

APPEARANCES: *Benjamin A. Barnes*, *Fabrizio Massari* and *Carlo Ricci* for the applicant; *Greg McGinnis* and *Dan Miron* for Mirtren Contractors Limited and Mirtren Construction Limited.

DECISION OF THE BOARD; September 30, 2010

1. The applicant sought certification under the construction industry provisions of the *Labour Relations Act*, 1995, S. O. 1995, c. 1 as am. (the "Act") in Board File No. 1451-07-R in which it named Mirtren Contractors Limited ("Contractors") as the responding party. Shortly after filing its application for certification, the applicant filed an application for declaratory and other relief under sections 69 or 1(4) of the Act in Board File No. 1483-07-R in relation to Contractors, Mirtren Construction Limited ("Construction") and Mirtren Builders Ltd. ("Builders") and an unfair labour practice complaint in Board File No. 1484-07-U against Contractors.

2. The Board in its decision dated August 22, 2008 in these three matters noted the applicant was no longer seeking any relief in respect of Builders in Board File No. 1483-07-R and withdrew that application as against Builders. It continued that application in respect of Contractors and Construction.

3. The Board in that August 22nd decision also recorded the parties had agreed these applications were not intended to affect the bargaining rights held by the intervenor in respect of Contractors and the Board noted, at the parties' request, that the relief, if any, obtained by the applicant in these proceedings shall not affect the intervenor's bargaining rights with Contractors. Any declaration made by the Board shall be subject to the pre-existing bargaining rights held by the intervenor pursuant to the May 1, 2005-April 30, 2008 collective agreement between it and Contractors. As a result of the parties' agreement and the Board having set out their understanding about the scope of any order the Board might make, the intervenor withdrew.

4. The Board in that August 22nd decision also recorded its ruling granting the motion made by Contractors and Construction to dismiss that portion of the application in Board File No. 1483-07-R seeking relief under section 69 of the Act.

5. The hearings in these matters then proceeded to deal first with the request for a single employer declaration in respect of Contractors and Construction since Contractors has taken the position it had no employees at work in the bargaining unit and in particular no employees working at the one job site the applicant had identified in its application, a commercial project at Thompson Road and Main St. in Milton (the "Milton Project"). Contractors and Construction contend the employees the applicant seeks to represent who were at work on the Milton Project on the application date were employees of Construction, not Contractors. They also submit all the construction labourers working for Contractors are covered by a collective agreement between it and the intervenor. There was no suggestion the construction labourers employed by Construction were covered by a collective agreement.

6. The applicant submits the Board ought to declare Construction and Contractors are one employer for purposes of the Act since both entities were at all material times under common ownership and control, carried on business in the construction industry, shared the same administrative support, held themselves out to the public as being one entity and were dealt with by their clients and suppliers as being one and the same.

7. The applicant, in the alternative, submits the Board should add Construction as a responding party to the certification application in the exercise of its discretion pursuant to section 112 of the Act. The Board notes the applicant had raised the issue of the identity of the responding party in the application for certification when it filed its application under section 1(4) and section 69 of the Act in Board File No. 1483-07-R. In that regard, we refer to the Board's decision in these matters dated October 1, 2007 in which it wrote:

In the certification application, the applicant takes the position that the correct name of the responding party is Mirtren Contractors Limited, Mirtren Construction Limited and Mirtren Builders Limited. The applicant consequently also takes the position that Mirtren Builders Limited and Mirtren Construction Limited ought to be added as a name employer to the application for certification. The responding party asserts that the correct

name of the responding party in the certification application is Mirtren Contractors Limited.

As noted earlier, the applicant withdrew the application in Board File No. 1483-07-R as against Builders and we understood the applicant was no longer seeking to add Builders as a responding party in the application for certification.

8. The Board received several volumes of documents and heard detailed evidence from the witnesses called by the responding parties. The applicant adduced the evidence on which it relies through its cross-examination of the responding parties' witnesses and the documents it had obtained from the responding parties. Although the Board heard many days of testimony and reviewed hundreds of pages of documents, the essential facts relevant to the disposition of this matter may be summarized relatively briefly.

9. Contractors is a general contracting company that has been in existence for more than 35 years and is based in Trenton. Contractors' employees are represented in collective bargaining by the intervenor.

10. Construction is a general contracting company incorporated in January 2006. Daniel Miron is the president and sole owner of Contractors and is the president and majority shareholder of Construction. Mr. Miron's father, Frank Miron, who is now over 80 years old, was one of the founders of Contractors but is no longer active in Contractors' business. He has had nothing whatsoever to do with Construction.

11. Mr. Miron worked for Contractors in the late 1970's as a foreman and then in 1980 moved to Calgary. He initially was employed by PCL Construction in Calgary. In 1982 he left PCL to open an office in Calgary to extend Contractors' industrial and commercial general contracting business into Western Canada. Contractors closed that Calgary office several years later.

12. Mr. Miron left Calgary to move to Toronto where he opened an office in Scarborough for Contractors in 1986. That Scarborough office is where Mr. Miron has worked since that time. Mr. Miron explained that his father gave him, as he put it in his evidence, a "long leash" to run the office Contractors opened and subsequently closed in Calgary and the office Mr. Miron opened in Scarborough. Mr. Miron's father had no involvement in the business carried on by Contractors out of the Scarborough office from the moment it started except for financing and bonding.

13. Mr. Miron, through a series of corporate transactions between 1992 and 1996 ultimately acquired 100% ownership of Contractors from his father. As of 1998, Mr. Miron's father was fully paid and "out of the business", according to Mr. Miron. Prior to acquiring all of his father's shares in Contractors, Mr. Miron had had no ownership interest in Contractors.

14. It was clear from the evidence that Contractors, from the late 1980's until the end of December 2005 carried on business as a general contractor out of two offices, one in Trenton and the other in Scarborough. While the revenue and income from the construction business undertaken from those two offices was for the benefit of Contractors both before and after Mr. Miron purchased the shares of Contractors from his father, there is little doubt in our view the construction activities carried out at each of those two offices were kept separate and were treated

by Mr. Miron and by the management group at Contractors' Trenton office as being two distinct undertakings.

15. During the period prior to Mr. Miron becoming the sole owner of Contractors when Mr. Miron's father owned it, Mr. Miron operated the Scarborough office of Contractors without any supervision, participation, direction or control from his father. Mr. Miron conceded that while he operated the Scarborough office he technically reported to his father, he was left to run that office as his own business. Mr. Miron explained no employees from Contractors' Trenton office ever worked for him out of the Scarborough office. Mr. Miron hired the employees who worked at the Scarborough office without any involvement of his father or anyone else at the Trenton office. Mr. Miron located and engaged the subtrades Contractors used on the projects the Scarborough office secured and he prepared the bids and signed the contracts for those projects. His focus for the business of Contractors at the Scarborough office was principally industrial and commercial construction as a general contractor.

16. Contractors' business undertaken at the Trenton office was also general contracting, but principally institutional construction focussing on government projects like CFB Trenton and schools, and other institutional type projects like churches. Mr. Miron said he could not remember the Scarborough office ever undertaking a government building project.

17. Mr. Miron explained that each office had its own customers and geographic area in which it worked. The Trenton office did not do work west of Port Hope while the Scarborough office concentrated on the Greater Toronto Area, west to Oakville and Milton, north to Barrie and east to Oshawa. While there was no specific agreement between the two offices about where they would each work, as a practical matter, the Contractors' employees did not want to have too long a commute to do their work. Mr. Miron also emphasized that there was an understanding between the offices that if one office had a customer, the other office would not do work for that customer.

18. Mr. Miron was responsible for the entire operations of the Scarborough office from its inception. The Trenton office was initially managed by his father, but in the late 1980's Mr. Miron's father appointed John MacDonald the general manager for the Trenton office. After Mr. MacDonald became the general manager of that office, Mr. Miron's father was no longer active in running the business. Mr. MacDonald became responsible for the day to day operations and control of the business in the Trenton office. Mr. Miron's father took on a "public relations" role for Contractors' Trenton business. Mr. MacDonald was given the authority to run the Trenton business.

19. According to both Mr. Miron and Mr. MacDonald, nothing changed with respect to how the Trenton and Scarborough offices carried on Contractors' business when Mr. Miron purchased the shares of Contractors from his father. Mr. Miron remained responsible for Contractors' business done by the Scarborough office while Mr. MacDonald remained responsible for Contractors' business done by the Trenton office. Mr. Miron had no role whatsoever in the operations of the Trenton office and Mr. MacDonald had nothing to do with the operation of the Scarborough office. Indeed, Mr. MacDonald in cross-examination said he could not ever recall a conversation with Mr. Miron about remaining the general manager of the Trenton office after Mr. Miron purchased ownership of Contractors from his father. Mr. MacDonald had been a long term employee of Contractors and the change of ownership did not affect his employment or his duties.

20. Mr. MacDonald explained how he and other members of his staff in Trenton secured work for the Trenton office. They sought out projects through reviewing announcements in trade publications and applied to the institution, like the Department of National Defence, school board or municipality to obtain the drawings or to pre-qualify to bid on the job and then obtain the drawings. There were two estimators working at the Trenton office of Contractors who, together with Mr. MacDonald reviewed the drawings, determined what work Contractors would do and what work would be subcontracted, prepared estimates for their work and obtained prices from the subtrades, put the bonding in place, and prepared and submitted the bids. Mr. MacDonald testified that since he became the Trenton office general manager and continuing after Mr. Miron became the owner of Contractors Mr. Miron had nothing to do with the estimating or bid process or obtaining bonds. Mr. MacDonald was adamant that Mr. Miron had no role whatsoever in the operation of Contractors' Trenton office. That responsibility had been delegated to him by Frank Miron in the late 1980's. After Mr. Miron purchased the shares of Contractors from his father and became the owner of Contractors, nothing changed with respect to how Contractors carried on business in its Trenton office.

21. Mr. MacDonald and another member of his staff conducted collective bargaining with the intervenor. Mr. Miron was never involved in either the negotiations or in giving instructions about the bargaining undertaken with the intervenor. Mr. MacDonald conceded that if Mr. Miron had wanted to participate he would have been entitled to do so once he became the owner of Contractors.

22. Mr. MacDonald also confirmed the Trenton office never did any work in the Greater Toronto Area and he could not recall any instance when Mr. Miron had referred work to the Trenton office. Mr. MacDonald said Frank Miron would occasionally advise the Trenton office about potential work opportunities. Mr. MacDonald and his other senior staff had developed a number of contacts in the Bay of Quinte, Trenton and Belleville area and were often able to obtain construction work for the Trenton office through those sources. Mr. MacDonald made it clear in his evidence that Mr. Miron had nothing to do with the Trenton office getting work, preparing and submitting bids and carrying out the construction work the Trenton office obtained.

23. Not only did the two offices of Contractors operate separately, the profits generated by each of the offices were segregated for purposes of the profit sharing plan Contractors had in place for its management group. Separate monthly financial reports for each office were generated as were separate annual financial reports. The revenues and expenses relating to projects carried out by each office were kept separate and at the end of the year, the profit sharing pool was created according to a formula that had been in place for many years. Each job carried out by Contractors was designated for internal accounting purposes as either an "S" job for Scarborough or a "T" job for Trenton. All invoices and expenses for the construction work carried out by Contractors were allocated to the specific job to which those billings and expenses related. The financial reports for each office were created based on the allocations of revenue and expenses for those jobs. In that way, the monthly and year end financial reports used to determine profit sharing accurately represented the work done out of each office. Once the year end financial reports were finalized, the profits generated by each office were determined and the profit sharing pool for each office was calculated, Mr. Miron determined the distribution of the profit sharing pool for the Scarborough office and Mr. MacDonald determined the distribution of the profit sharing pool for the Trenton office.

24. Since the Trenton and Scarborough offices carried on business as Contractors, the two offices shared common administrative support services located in the Trenton office. The internal financial statements, accounting, banking and insurance were all handled by the Contractors administrative staff in Trenton, principally by Donna Smith, who has been with Contractors for more than 20 years.

25. We are satisfied that Contractors carried on its business in two distinct divisions reporting to Mr. Miron and Mr. MacDonald respectively for operational and labour relations purposes, both when Mr. Miron's father owned Contractors and subsequently when Mr. Miron purchased Contractors from his father.

26. In the fall of 2005, Mr. Miron decided to incorporate Construction to allow Sukvinder Rehal, who had worked for Mr. Miron in the Scarborough office as an estimator and project manager continuously for some 12 years, to acquire a share of Contractors' business carried out by the Scarborough office. It was important to Mr. Miron that Mr. Rehal's interest be limited to Contractors' Scarborough business because Mr. Rehal had had nothing to do with Contractors' Trenton business.

27. Construction was incorporated at the end of December 2005 with Mr. Miron as the first director. The shares of Construction were held 75% by Contractors and 25% by a holding company established by Mr. Rehal. In addition to the incorporation of Construction, there were various commercial agreements between Construction and Contractors by which Construction purchased from Contractors the assets used by the Scarborough office to carry on its construction business. By the beginning of January 2006, the business of Contractors that had been carried out by its Scarborough office had been transferred to Construction. While the legal form of the business had changed, both offices continued to operate as they had before.

28. Throughout the year 2006, despite the existence of Construction, invoices were issued and payments were made for the work it did out of the Scarborough office in the name of Contractors. Indeed, Construction did not open a bank account in its own name until the middle of 2006 and bonding for Construction's work continued under the name of Contractors until early 2007. As a result, projects undertaken by the Scarborough office in 2006, despite being Construction's projects, were carried out in the name of Contractors. Mr. Miron acknowledged a good deal of the paperwork relating to the Scarborough office created in 2006 did not refer to Construction but continued in the name of Contractors. According to Mr. Miron, 2006 was, in his words, a transition year where the practical on the ground issues caught up with the legal form of the two businesses.

29. By March, 2007 the various registrations for Revenue Canada and WSIB were completed and the bonding in the name of Construction was secured. Mr. Miron acknowledged in his cross-examination that bids issued by the Scarborough office and the construction contracts it obtained in 2006 were in the name of Contractors. The bids and contracts entered into after the bonding program was established for Construction in early 2007 were in the name of Construction. The construction contracts secured by the Scarborough office before that date were with Contractors and were not changed. Hence, invoices were issued in the name of Contractors between January 2006 and early 2007 and payments were made to Contractors even though, according to Mr. Miron, the work was being done by Construction after January 2006.

30. At the time the applicant sought certification Construction was carrying on its construction business in its own name. Indeed, the Milton Project, the one construction project identified by the applicant in its application for certification was clearly signed as being undertaken by Construction. In that regard, Contractors, in its response, contended it had no employees at work in the bargaining unit and asserted another company with a similar name was the employer engaged in not only the Milton Project but was also working at several other projects on the date this application was made. Contractors in that response also asserted, in any event, its employees were covered by its collective agreement with the intervenor.

31. There is a common website that does not differentiate between the projects undertaken by Construction and Contractors. A promotional brochure used by both Contractors and Construction is identified by the Mirtren logo, refers to the history of Mirtren as one entity, and while it does list both Contractors and Construction as distinct corporations under the Mirtren logo, it clearly is designed to convey an impression the two entities are one enterprise. Although Construction did erect signs at the Milton Project indicating Construction was the general contractor at that project, there is a good deal of similarity between the names of Contractors and Construction and both Contractors and Construction share the same corporate logo. Perhaps most significantly, when customers of Construction referred to it as Contractors and made payments to Contractors, there was no attempt to correct those customers and the payments were accepted by Construction and deposited in its bank account. In the same vein, the Certificate of Substantial Performance of the Contract Under Section 32 of the Act [Construction Lien Act] (Form 6 under the Construction Lien Act) dated October 2007 for the Milton Project prepared by the architect for that project refers to the contractor at that project as being Contractors. The certificate of publication issued by the Daily Commercial News for the Form 6 Certificate for the Milton Project also refers to Contractors rather than Construction.

32. There is no doubt the conditions precedent for a single employer declaration under section 1(4) of the Act exist in this case. Section 1(4) of the Act provides:

(4) Where, in the opinion of the Board, associated or related activities or businesses are carried on, whether or not simultaneously, by or through more than one corporation, individual, firm, syndicate or association or any combination thereof, under common control or direction, the Board may, upon the application of any person, trade union or council of trade unions concerned, treat the corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purposes of this Act and grant such relief, by way of declaration or otherwise, as it may deem appropriate.

Construction and Contractors carry on business as general contractors in the construction industry and therefore are engaged in associated or related businesses. While the evidence indicates the direct operational responsibilities for Contractors rests with Mr. MacDonald while Mr. Miron is responsible for the operations of Construction, Mr. MacDonald does ultimately report to Mr. Miron and Mr. Miron does have the authority, if he chooses to do so, to exercise greater control over Contractors. Moreover, they share the same administrative support (for which Construction pays Contractors a monthly fee) in terms of accounting services. Although the day to day operations are distinct, we are nevertheless satisfied the two entities are under common control.

33. The only issue is whether the Board should in the circumstances of this case exercise its discretion under section 1(4) of the Act to declare Contractors and Construction one employer for purposes of the Act. Up until 2006, Construction did not exist. The Scarborough office which became the business of Construction and the Trenton office of Contractors were one enterprise, albeit carrying on their day to day construction operations separately. The creation of Construction was prompted, not by any labour relations concerns but rather as a corporate undertaking to allow Mr. Rehal to participate in the ownership and growth of Construction's business while at the same time preserving the ownership of Contractors for Mr. Miron. Mr. Rehal had had a significant role in the business and operation of the Contractors' portion of the business acquired by Construction and no role or responsibility for the balance of the business or operations of Contractors.

34. The applicant argues the Board's exercise of discretion in this case is necessary to ensure the entire enterprise is subject to the applicant's bargaining rights if it is successful. The applicant asserts there is far too much risk of erosion of any bargaining rights it might secure if the two entities, which it says are really one enterprise, are not declared to be one employer. The applicant also points out the intervenor's bargaining rights do not extend to Board Area 8 and therefore are not a proper consideration in assessing whether to exercise the Board's discretion.

35. The applicant referred to *Lawrence Construction*, [1991] OLRB Rep. Oct. 1160 in which the Board granted a section 1(4) single employer declaration in a certification proceeding. In that case the union had named an entity which claimed it was not the employer of the employees the union was seeking to represent. The union then sought a single employer declaration asserting that the named responding party and the other entity which was the employer of the employees should be treated as one employer. The principal issue in the case seemed to be whether the Board should even entertain the section 1(4) application in the context of an application for certification. In the course of making the declaration the Board at page 1169 described the purpose of section 1(4) of the Act as including "the protection against the frustration of a trade union's efforts to gain bargaining rights...and to protect against the erosion of those bargaining rights." The Board then observed later in that same paragraph:

Domenic Vozza controls the work or contracts obtained by Excavating. He decides how the work is performed and who the subcontractors will be. Prior to the incorporation of Lawrence Construction, Excavating employed labourers directly. These two entities carry on "associated or related activities or businesses" in the construction industry. The contract for the "Watermain Construction on Colbourne Road and Indian Road" was awarded to Excavating.

After referring to those facts the Board then writes, after distinguishing two decisions relied on by the responding parties:

We are satisfied having regard to the evidence, the submissions of counsel and the cases cited that Excavating & Lawrence Construction are associated or related businesses under common control or direction. On the facts in this case we are satisfied that this is an appropriate case for the Board's exercise of its discretion to make the section 1(4) declaration.

The Board's conclusion is clear but it appears the reasons for exercising its discretion were based almost entirely on the fact that the two entities were under common control and direction and because the union had named the excavating company as the employer when Lawrence Construction asserted it was the employer of the employees affected by the application.

36. The applicant also relied on the following passage in *Jeffery Homes*, Board File Nos. 3968-04-R and 0402-05-R, decision dated September 8, 2005, unreported, 2005 CanLII 33278 (ON L.R.B.) at paragraphs 29 and 34:

29. ...Canadian labour relations tribunals may utilize related employer provisions not only to redress schemes to erode bargaining rights, but also to ensure the identity of the employer reflects economic realities. The related employer provision may be invoked at the outset of a collective bargaining relationship. The key element is that there must be a valid labour relations purpose for making the declaration.

34. In the Board's view, the responding parties' position fails to take into account the overall economic realities of its operations. For the reasons set out above, Wayne Jeffery utilizes WJ, 2905 and 123 as one functionally integrated economic vehicle to build and sell residential homes. There is absolutely nothing wrong in this. However, Local 183's bargaining rights should also reflect these economic realities. Where multiple corporations present themselves to the public as a single enterprise, then a related employer application is appropriate: *Golden Arm Flooring Inc.*, [1992] OLRB Rep. June 731; *Durie Tile and Marble Ltd.*, Board File No. 3913-02-R, 2005 Can. LII 22558 (ON LRB).

In *Jeffery Homes* the Board observed at paragraph 28:

Counsel for Local 183 says a related employer declaration is warranted now. The three corporate entities operate as one functionally integrated enterprise to build and sell residential homes. There is a history of work moving amongst the corporate entities. This is shown by the change in the identity of the corporations building the homes over the last five years, and the change in the corporation hiring and paying contractors and trades. The related employer declaration is needed to reflect the economic realities of the situation.

37. The applicant also submits the Board should not have too much heed to how the two companies have operated in the past because given the fact that Mr. Miron does effectively control both Construction and Contractors, to refuse to have them treated as one employer would be an invitation to them to evade any bargaining rights the applicant might obtain for Construction by simply having the work done by Contractors. The Board in *Jeffery Homes* commented on that point when it wrote at paragraph 32:

Applying these considerations to this case leads to the conclusion that the related employer application should be granted. WJ, 2905 and 123 are nominally separate corporations, but they operate in concert under the direction of Wayne Jeffery to construct homes and sell them to the public. Through common direction of the corporations, Mr. Jeffery decides which corporate entity will purchase the land, employ the requisite contractors and

trades, and sell the homes. Similarly, Mr. Jeffery decides which entity will hire and pay the construction labourers, although only WJ has done so to date. However, as the Board stated in *The Georgian Construction Company Limited*, [1995] OLRB Rep. March 354, past practice is no guarantee of future activities and is not a valid reason for the Board to refuse to exercise its discretion where overall circumstances otherwise merit a related employer declaration. This is particularly true in the fluid world of the construction industry where work and work opportunities can rapidly flow from one corporation to another and among various sectors, subdivisions, phases or specialized kinds of construction work: see *Frank Plastina Investments Ltd.*, [1986] OLRB Rep. June 720 at paragraph 20.

See also *Hydro One Inc.*, [2002] OLRB Rep. May/June 428 at 453.

38. The applicant also argues the Board should, in the event it is not prepared to grant the single employer declaration, add Construction as a responding party to the application for certification. It argues that given the uncertainty as to which of Contractors or Construction was the actual employer at the Milton Project or at the other projects where Construction claims it was working on the application date it is necessary to add Construction as a party to ensure the actual employer of the employees the applicant seeks to represent is subject to this application. As the applicant puts it, it simply does not know which one was the employer of the employees who may be affected by the application. It knows what Construction says and knows what Contractors says but it is not prepared to simply accept their assertions.

39. In our view the focus of the Board's exercise of discretion must be on the labour relations purpose that would be served by making the declaration. Unlike the situation in *Jeffery Homes* the evidence presented by the responding parties demonstrates unequivocally that despite being under the overall control of Mr. Miron's father initially and then Mr. Miron, Contractors has historically operated its Scarborough and Trenton offices as separate undertakings. That did not change with the creation of Construction.

40. It is significant in our opinion that Construction was created as a vehicle to ensure Mr. Rehal could participate in the growth of the business with which he was associated and involved, that is, the Scarborough office of Contractors that was transferred to Construction without obtaining an interest in any other part of the business of Contractors. This is not, in our view, a situation where, as in *Jeffery Homes*, the three entities were a single commercial enterprise carrying on business as a home builder. While we agree that there is much in common between Construction and Contractors and also accept the Board's observation in *Jeffery Homes* that "in the fluid world of the construction industry where work and work opportunities can rapidly flow from one corporation to another" the Board in our view must not lose sight of the way in which Contractors had developed and ignore the reasons for the creation of Construction.

41. The responding parties contend the applicant deliberately chose to name Contractors in its application when it knew or should have known the employer at the Milton Project was Construction. They argue the applicant is bringing the single employer application in order to provide a way for it to now proceed with an application against the actual employer when it knew that Contractors was not the employer. In effect, the applicant seeks to obtain through section 1(4) of the Act what it cannot get by having Construction substituted for Contractors under section 112 of the Act.

42. It is clear to us that Contractors and Construction operate separately as construction businesses. We acknowledge the applicant might have named Construction as the responding party in its application. We also accept the responding parties' assertion that the applicant had not ever suggested, let alone called evidence to establish it had made an error "in good faith with the result that the proper person has not been named as a party or has been incorrectly named". Nevertheless the Board must have regard to what has occurred and what circumstances existed at the time the application for certification was filed.

43. Dealing first with the issue of discretion under section 1(4) of the Act we point out although the intervenor's bargaining rights in respect of Contractors do not extend to Board Area 8 those bargaining rights do include the industrial, commercial and institutional sector of the construction industry in several Board Areas. We also note the description of the appropriate bargaining unit as determined earlier by the Board specifically excludes "those employees in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario for whom a union holds subsisting bargaining rights." Thus, it is clear to us the intervenor's bargaining rights with Contractors is not a relevant factor in the exercise of the Board's discretion under section 1(4) of the Act as those bargaining rights do not overlap with the bargaining unit the applicant seeks to represent.

44. We are of the view that there is not a proper labour relations justification for issuing a single employer declaration in the circumstances of this case. We accept the Board must be cognizant of the realities of the construction industry and must exercise that discretion to remedy an erosion of bargaining rights and perhaps to prevent their erosion from occurring. However, on the facts presented in this case, it is clear that Contractors and Construction operate independently of one another. There is in our view a viable business to which the applicant's bargaining rights would attach if it were successful in obtaining bargaining rights for the employees, if any, of Contractors who are not already represented by the intervenor or for the employees of Construction.

45. We also accept that the transition of Contractors' Scarborough business to Construction might have been done more crisply but because the creation of Construction was to facilitate Mr. Rehal's ownership interest in Construction and because there had already been a long history of keeping the two businesses separate, there was no pressing need to "dot the i's and cross the t's" immediately for either external or internal purposes. Construction did not attempt to obtain an assignment of the contracts it had entered into under the name of Contractors because it was simply unnecessary to do so.

46. Construction began bidding and signing contracts in its own name before any application for certification was filed. Thus the transition of Contractors' Scarborough office business to Construction and the overlap during that first year did not, in our view, have any material impact on the applicant's ability to organize and apply for certification.

47. The evidence clearly demonstrated the construction work secured by the Scarborough office was always allocated to the Scarborough office and, as of January 1, 2006, was the business of Construction. Contractors' internal documents had made that allocation of work between the Scarborough and Trenton office clear for almost 20 years and since the creation of Construction that allocation has continued.

48. In our opinion Construction is an ongoing viable construction company that carries on business employing construction labourers. It is not a vehicle used by Contractors to move work from one office to another. While the responding parties' promotional material indicates the responding parties constitute one integrated business, each of the two companies has a distinct work force and management group. They operate in different areas of the province and do not share assets, tools, equipment, employees or customers. Construction does continue to use Contractors' administrative facility and office employees for accounting and preparation of financial statements and pays a monthly fee to Contractors for that work.

49. We accept there is a theoretical potential for the erosion of bargaining rights. That potential exists any time two entities engaging in related activities or business are under common control or direction. It seems to us there must be more than a theoretical potential for the erosion of bargaining rights to warrant the Board exercising its discretion to issue a single employer declaration. The risk of erosion must be real and be more than mere speculation about what might possibly occur. See, for example *Dobben Group Inc.*, [1996] OLRB Rep. Feb. 57 at 61. In *Hydro One Inc.*, [2003] OLRB Rep. Sept./Oct. 872 the Board made the following comment about the potential erosion of bargaining rights at pages 881-82:

The purpose of section 1(4) is to preserve the meaningful nature of bargaining rights. It serves to protect them from being deliberately subverted, or from being eroded by commercial decisions entirely divorced from labour relations considerations. It is therefore necessary for an applicant to demonstrate that there is either actual or potential erosion of those bargaining rights. ... The erosion need only be minor or be only reasonably likely to happen.

See also *Environmental Management Solutions Inc.*, [2005] OLRB Rep. May/June 405 at 410.

50. The Board in *Jeffery Homes* noted that "past practice is no guarantee of future activities and is not a valid reason for the Board to refuse to exercise its discretion where overall circumstances otherwise merit a related employer declaration." In this case the overall circumstances do not "otherwise merit a related employer declaration." The Trenton and Scarborough businesses have been carried on as discrete undertakings for more than 20 years even when both offices were carrying on business as Contractors. That division has continued and been reinforced by the incorporation of Construction. Construction was created to insulate the Trenton business of Contractors from the Scarborough business because Mr. Rehal had acquired an ownership interest in the Scarborough business. In these circumstances we do not believe it is reasonably likely the bargaining rights the applicant might acquire in respect of Construction would be eroded. We think it improbable that Construction would move its work to Contractors now that Mr. Rehal has an ownership interest in Construction and when it (and its predecessor, the Scarborough office of Contractors) had never done so before. In any event, should that occur, the applicant would, in our opinion, have a much firmer foundation for claiming that Contractors and Construction ought to be declared one employer for purposes of the Act in any subsequent application it may file for declaratory relief under section 1(4) of the Act.

51. In our opinion no labour relations purpose would be served to declare Construction and Contractors one employer for purposes of the Act in the circumstances that existed at the time the application for certification was filed.

52. Therefore the application in Board File No. 1483-07-R for a single employer declaration is hereby dismissed.

53. The applicant had urged the Board to avoid dealing with its request under section 112 of the Act by issuing the single employer declaration. It seeks to add Construction as a responding party in the alternative. Construction opposes being added as a party. It says the applicant has not provided any proper basis for the Board to exercise its discretion under section 112 of the Act. It contends the applicant must first assert it had made a mistake in good faith before the Board even entertains a request to add a party pursuant to section 112 of the Act.

54. Section 112 of the Act provides:

Where in any proceeding before the Board the Board is satisfied that a mistake has been made in good faith with the result that the proper person or trade union has not been named as a party or has been incorrectly named, the Board may order the proper person or trade union to be substituted or added as a party to the proceedings or to be correctly named upon such terms as appear to the Board to be just.

Regard must also be had to Rule 40.8 of the Board's Rules of Procedure. Rule 40.8 provides:

The Board may direct that any person be added or removed as a party or be sent any document, as the Board considers advisable.

55. The responding parties submit the applicant has not asserted it had made a mistake when it named Contractors and not Construction as the responding party to its application for certification. In the absence of any evidence about a mistake there is simply no basis for exercising discretion under section 112. They also argue that while Rule 40.8 gives the Board a broad discretion to add any person as a party the discretion under Rule 40.8 cannot go beyond the power conferred on the Board by section 112. In other words, as we understood the responding parties, before the Board can add any person as a party pursuant to Rule 40.8 it must first be satisfied there was a mistake made in good faith in not naming that person as a party because a good faith mistake is fundamental to the exercise of that discretion.

56. It is important to note the applicant sought to add Construction (and Builders) as parties to the certification application shortly after it received the response to that application and had also filed its application for declaratory relief under sections 69 and 1(4) of the Act. Moreover, the responding parties do not assert they would be prejudiced if Construction was added. They suggested the applicant could have initially named Contractors and Construction as responding parties in its certification application but for reasons only known to the applicant chose not to do so. Both Construction and Contractors had notice of the application for certification. The response to the application filed by Contractors asserted it had no employees but it also on a without prejudice basis provided a list of 10 job sites in Board Areas 8 and 9 where it says Construction was carrying on work. Contractors also filed with its response a list containing the names of 19 individuals who it claims were working at those 10 job sites on the application date.

57. In our view it is not necessary for a party to assert it had made a mistake before the Board can exercise its discretion under section 112 of the Act. We need not decide whether Rule 40.8 is broader than section 112 since we are satisfied that a "mistake has been made in good

faith" when Construction was not immediately named as a responding party. The applicant named Contractors as the employer. When it learned Contractors was asserting it was not the employer of the employees at the Milton Project, the applicant sought to have Construction and Builders together with Contractors declared a single employer and added as responding parties to the application for certification. We accept the applicant's argument that a mistake was made when Construction was not named as a responding party in the application for certification but that mistake only became apparent when the single employer declaration it sought was not granted. That is, the mistake within the meaning of section 112 only came to light when the applicant was unsuccessful in having the Board make the single employer declaration.

58. In *H. Carp Limited o/a Ace Wrecking Company*, Board File No. 1845-05-R, decision dated October 21, 2005, unreported, 2005 CanLII 40242 (ON L.R.B.) the Board wrote:

6. It is common practice for the Board to amend the name of a party in the course of a certification proceeding: see *Beatrice Foods (Ontario) Limited* [1982] OLRB Rep. June 815; *City of Toronto* [1985] OLRB Rep. August 1323. Pursuant to section 112, the Board can even amend the name of an employer responding party in a certification application in the context of a reconsideration request: *D and B Masonry*, Board File No. 1979-04-R, dated March 1, 2005. The Board only has to be satisfied that the error in the name is the result of a mistake made in good faith.

7. In this case, the name of the responding party as indicated in the application was "Carp, H Limited Ace Wrecking Co.". The name of the responding party that both parties have agreed is correct is "H. Carp Limited o/a Ace Wrecking Company". It can readily be seen that there is little difference between the two names, other than that the latter version is legally correct in that Ace Wrecking Company is a business style of the corporation H. Carp Limited. Therefore, the error in the name of the responding party was one of form only. The responding party was not misled in any way by the error. Nor was the responding party prejudiced in its ability to respond to the certification application. Indeed, the responding party has now reached agreement on all other relevant issues in this application with the applicant.

8. In these circumstances, the Board finds that the error in the name of the responding party in the certification application was the result of a mistake made in good faith by the applicant, and that the Board can and should correct the name of the responding party pursuant to section 112 of the Act to the name agreed upon by the parties.

See also *Peninsula Maintenance Ltd.*, Board File Nos. 1082-06-G, 1083-06-G, decision dated April 22, 2008, unreported, 2008 CanLII 20814 (ON L.R.B.) We believe that analysis applies equally to this proceeding.

59. The applicant initially named Contractors as the responding party in its application for certification. Contractors took the position it was not the employer of the employees working at the Milton Project the applicant was seeking to represent. The applicant immediately sought to add Construction (and Builders) as responding parties to that application and applied for a single employer declaration in respect of Contractors and Construction asserting they were under common control and direction carrying on related businesses. Given the similarity of the names

and the common logo and website they share it was certainly reasonable for the applicant to claim they were one employer.

60. We do not accept the applicant had to call evidence to prove as a fact it had made a mistake when it named Contractors instead of Construction in order for the Board to exercise its discretion under section 112 of the Act to add Construction as a party to the certification application. Rather, in our view, the applicant acted reasonably, as soon as it learned Contractors was taking the position it was not the employer, to seek to add Construction and apply for a single employer declaration. It seems to us the applicant was not aware a mistake had occurred until it was unsuccessful in its request for a single employer declaration. In these circumstances, the Board is prepared to exercise its discretion under section 112 of the Act and under Rule 40.8 of the Board's Rules to add Construction as a responding party to this application for certification.

61. The Board hereby amends the title of the proceedings in Board File No. 1451-07-R by adding Mirtren Construction Limited as a responding party.

62. There are a number of status disputes outstanding relating at least in part to the responding parties' assertion that Construction was engaged in several other projects in Board Areas 8 and 9 in addition to the Milton Project where its employees were working on the application date. In addition, the applicant's request for relief under section 11 of the Act together with its unfair labour practice complaint in Board File No. 1484-07-U both remain to be determined.

63. It appears to us that a resolution of all or even some of those status disputes may have an impact on the application for relief under section 11 of the Act. In these circumstances, the Board refers the two remaining applications in Board File Nos. 1451-07-R and 1484-07-U to the Manager of Field Services to convene a meeting with the parties to review the parties' positions with respect to those status disputes in light of this decision and to deal with any other matters relating to these two applications the parties might raise.

1363-07-U Ontario Public Service Employees Union, Applicant v. Oaklands Regional Centre, Responding Party

Duty to Bargain in Good Faith – Unfair Labour Practice – During bargaining for a renewal collective agreement, OPSEU sought the names and telephone numbers of all its members from the employer – The employer resisted, relying on a provision in the parties' collective agreement that limited disclosure of employees' contact information to once per year, and exempted those employees who objected to having their contact information given to the union – OPSEU alleged the employer was bargaining in bad faith and interfering with the union's statutory right to represent its members; it was not specifically relying on the alleged breach of the collective agreement – The Board found the employer has a positive obligation to provide the information to the union to facilitate equal bargaining positions in the collective bargaining relationship – The union's request for the information was made in the context of giving notice to bargain a new collective agreement – The employer's refusal to furnish the information was an interference with the union's administration of its bargaining rights – Application allowed

BEFORE: *Ian Anderson*, Vice-Chair, and Board Members *P. LeMay* and *C. Phillips*.

APPEARANCES: *Richard Blair* and *Neil Fraser* appeared on behalf of the applicant; *Paul Bonifero*, *David Phillips* and *Susan Scott* appeared on behalf of the responding party.

DECISION OF THE BOARD: September 10, 2010

1. This is an application under section 96 of the *Labour Relations Act, 1995*. The applicant union alleges that the refusal of the employer to provide it with the telephone numbers of employees' in the bargaining unit within the context of collective bargaining constitutes a breach of sections 17 and 70 of the Act.

2. Sections 17 and 70 of the Act provide:

17. The parties shall meet within 15 days from the giving of the notice or within such further period as the parties agree upon and they shall bargain in good faith and make every reasonable effort to make a collective agreement.

....

70. No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

The Facts

3. The hearing was conducted on the basis of the following Agreed Statement of Facts¹:

Ontario Public Service Employees Union ("the Union") and Oaklands Regional Centre (now referred to as Central West Specialized Developmental Services) ("Oaklands") agree that instead of proceeding by way of calling *viva voce* evidence in the application before the Ontario Labour Relations Board filed by the Union on July 19, 2007 (File No. 1363-07-U) (the "Application"), the evidence shall be limited to the following agreed facts:

Background

1. Oaklands is a non-profit organization providing specialized residential services, care and support to individuals over 18 years of age with multiple developmental disabilities. Oaklands' main facility is located in Oakville, Ontario.

2. In addition to its residential operations, Oaklands manages:

¹ All documents cited in the Agreed Statement of Facts were attached and adopted by reference in footnotes to the Agreed Statement of Facts. Those footnotes have been omitted in what follows.

- (a) a Respite Program, which provides non-emergency respite for families and caregivers of children and adults with developmental disabilities;
 - (b) a Dual Diagnosis Service, which provides community-based assessment, treatment, and planning for persons with a dual diagnosis, as well as mentoring and training support for their caregivers; and
 - (c) Halton Support Services, which provides access to various non-residential programs and community resources for persons with developmental disabilities living in the Regional Municipality of Halton.
3. Oaklands is also a member of the Central West Network of Specialized Care, which is a group of service providers that delivers care and treatment, consultations, teaching, education, and training for adults with developmental disabilities in Peel, Halton and Waterloo Regions and Dufferin and Wellington Counties.
4. The Union is the exclusive bargaining agent for an "all employee" bargaining unit of employees of Oaklands ("the Bargaining Unit").
5. On the date of the Application, the Union represented approximately 173 employees at Oaklands, including residential counsellors, day programme instructors, support workers, vocational support workers, community support workers, casual relief staff, housekeeping staff, and some administrative staff.
6. The Union has been certified to represent the employees in the Bargaining Unit since 1985. Since that time, the Union and Oaklands have negotiated and entered into several consecutive collective agreements.
7. The Union and Oaklands are currently parties to a collective agreement effective from April 1, 2007 to March 31, 2010 ("the Current Collective Agreement").

The 2002 Settlement

8. On May 30, 2002, the Union filed an Application under section 96 of the *Labour Relations Act, 1995* ("the Act") alleging that Oaklands violated section 70 of the Act by refusing to provide the Union with the home telephone numbers of employees in the Bargaining Unit ("the 2002 Application").
9. Prior to the filing of the 2002 Application, there was no provision in the collective agreement between the Union and Oaklands pertaining to Oaklands' obligation to disclose the personal contact information of Bargaining Unit employees to the Union.
10. On November 29, 2002, the Union and Oaklands entered into Minutes of Settlement and settled all issues, *inter alia*, arising out of the 2002

Application ("the Minutes"). The Minutes were then incorporated into a Decision of the Board, dated January 23, 2003.

11. In the Minutes, the Union and Oaklands expressly agreed that the Union's request for the provision of employee phone numbers would be "a matter for future collective bargaining". Specifically, paragraph 1 of the Minutes stated:

The Union's request for the provision of employee phone numbers will be a matter for future collective bargaining. Until such time as the parties agree otherwise, the Employer will not release the phone numbers of employees who request that their numbers be kept confidential.

The Disclosure Provision

12. In accordance with the parties' agreement under paragraph 1 of the Minutes, the Union and Oaklands subsequently reached an agreement on collective agreement language pertaining to the disclosure of bargaining unit employee telephone numbers ("the Disclosure Provision").

13. The Disclosure Provision was officially incorporated into the collective agreement concluded on November 22, 2004, which had a term of operation from April 1, 2003 to March 31, 2005 ("the 2003-2005 Collective Agreement"). The Disclosure Provision was set out at Article 6.01.

14. The Disclosure Provision provides as follows:

The Employer will provide the Union annually (July) with a list of names, addresses and telephone numbers of those Employees who do not object and for whom deductions have been made. Once per year the Employer will send out a notice notifying Employees of this event. Employees not wishing to have their phone numbers released to the Union must respond in writing to the Employer annually.

15. Following the expiry of the 2003-2005 Collective Agreement, the Union and Oaklands agreed to renew the Disclosure Provision without amendment. The Disclosure Provision was consequently included in the collective agreement concluded by the parties on February 13, 2006, with a term of operation from April 1, 2005 to March 31, 2007 ("the 2005-2007 Collective Agreement").

16. The Union did not file any grievances alleging a failure by Oaklands to comply with its obligations under the Disclosure Provision during the term of operation of either the 2003-2005 Collective Agreement or the 2005-2007 Collective Agreement.

The Union's 2007 Request for Bargaining Unit Employees' Telephone Numbers

17. On January 12, 2007, Neil Fraser, Staff Representative of the Union, wrote a letter to James Duncan, Executive Director of Oaklands, in which he

provided formal notice of the Union's desire to commence bargaining for a new collective agreement. In the letter, Mr. Fraser also requested that Oaklands provide the Union with "the names, addresses, work and home telephone numbers of all bargaining unit employees".

18. Mr. Duncan responded to Mr. Fraser in a letter, dated March 9, 2007, attaching the names and addresses of all employees in the Bargaining Unit as of that date ("the Letter of March 9, 2007").

19. Oaklands did not produce the telephone numbers of any of the employees in the Bargaining Unit in the Letter of March 9, 2007 because Oaklands had not yet determined which employees objected to the disclosure of their telephone numbers to the Union (the "Non-Consenting Employees").

The Union's Bargaining Proposal

20. The Union and Oaklands commenced bargaining for the Current Collective Agreement on April 26, 2007. On that date, the Union tabled a proposed amendment to the Disclosure Provision that would have required Oaklands to produce the telephone numbers of all Bargaining Unit employees, with or without their consent.

21. Specifically, the Union made the following proposal to amend the Disclosure Provision:

Article 6:

Amend to:

Delete "employees who do not object".

Delete "Once per year Oaklands will send out a notice notifying employees of this event. Employees not wishing to have their phone number released to the Union must respond in writing to Oaklands annually."

The Union's Second Request for Employees' Telephone Numbers

22. On June 8, 2007, Mr. Fraser sent an e-mail to Donna Brazelton, Director of Human Resources at Oaklands, in which he again requested the names, addresses and phone numbers for all bargaining unit members. Mr. Fraser specifically noted in his letter that the information previously provided by Oaklands had not included the phone numbers of Bargaining Unit employees.

23. Ms. Brazelton responded to Mr. Fraser in an e-mail, dated June 15, 2007, in which she indicated that Oaklands was "not required to release the phone numbers for those employees who do not wish to have their numbers released to the union". Accordingly, Oaklands did not provide the phone numbers of Bargaining Unit employees at that time.

The Application

24. On July 18, 2007, the Union filed the present Application under section 96 of the Act, in which the Union alleges that Oaklands violated sections 17 and 70 of the Act by refusing to provide the Union with the home telephone numbers of all employees in the Bargaining Unit.

Oaklands' Release of Employees' Telephone Numbers

25. On July 27, 2007, Oaklands finalized the list of Non-Consenting Employees. On the same date, and in accordance with the Disclosure Provision, Oaklands provided the Union with the telephone numbers of all employees in the Bargaining Unit, except for the telephone numbers of the Non-Consenting Employees. There were 13 Non-Consenting Employees at the time.

Renewal of Article 6.01 in the Current Collective Agreement

26. On October 3, 2007, the Union and Oaklands concluded the Current Collective Agreement in which, pursuant to the terms of the Memorandum of Settlement," the parties reached a full settlement of all matters in dispute at the bargaining table.

27. As part of the settlement between the Union and Oaklands, the parties agreed to renew the Disclosure Provision without amendment for the term of operation of the Current Collective Agreement.

Employee Turnover

28. Over the course of a year, there is some level of changeover of employees in the workforce at Oaklands. Therefore, the identities of bargaining unit employees may vary to some degree.

The Parties' Arguments

4. The Union argues that as a function of its right and obligation to represent employees in the bargaining unit it is entitled to the bargaining unit employees' telephone numbers. The refusal of Oaklands to provide that information constitutes a breach of section 70 of the Act. It cites the following Board decisions: *The Millcroft Inn*, [2000] OLRB Rep. Jul./Aug. 665; *Ottawa-Carleton District School Board*, [2001] OLRB Rep. Nov./Dec. 1426; *Baron Metal Industries Inc.*, [2001] OLRB Rep. July/Aug. 945; *The Alcohol and Gaming Commission of Ontario*, [2002] OLRB Rep. Jan./Feb. 1; *Canadian Niagara Hotels Inc.*, [2005] OLRB Rep. Nov./Dec. 932; and *York University*, [2007] OLRB Rep. May/Jun. 659. It notes that the Ontario jurisprudence has been followed and applied in other Canadian jurisdictions, citing: *Treasury Board and Canada Revenue Agency*, [2008] C.P.S.L.R.B. No. 13; *Bank of Canada*, [2007] C.I.R.B.D. No. 17; *Buhler Manufacturing*, [2007] M.L.B.D. No. 10; *Economic Development Edmonton*, [2002] A.L.R.B.D. No. 41; *P. Sun's Enterprises (Vancouver) Ltd.*, [2003] B.C.L.R.B.D. No. 301; *Hudson's Bay Company*, [2004] B.C.L.R.B.D. No. 227; and *Monarch Transport Inc.*, [2003] C.I.R.B.D. No. 42. Further the Union argues given that the Board's jurisprudence has now routinely recognized that unions have a right to such information, Oaklands' refusal to provide that information constitutes a

breach of its obligation to make every reasonable effort to conclude a collective agreement pursuant to section 17 of the Act.

5. The Union argues that the Minutes of Settlement entered into between the parties in 2002 do not change this result. The Minutes remitted the matter to collective bargaining. The parties met and bargained. The Minutes are now spent. In addition, the Minutes were without prejudice to any future proceedings. They do not prevent the Union from advancing the position it now seeks to advance in these proceedings. Finally, nothing in the Minutes purports to prevent the Union from enforcing its statutory right to this information. The Disclosure Provisions of the collective agreement concluded in 2003, renewed in 2005 and again, after this application was filed, in 2007 govern the day to day operations of the workplace, but do not prevent the Union from asserting its statutory rights to the information under section 70 and, within the context of collective bargaining, section 17.

6. Oaklands argues that the Board should give primacy to the agreements of the parties as reflected in the 2002 Minutes, which were incorporated into a Board order, and the three collective agreements which they have reached since that time. It notes that nowhere does the statute expressly provide that a union is entitled to the names, addresses or telephone numbers of bargaining unit members. This is because the Act deliberately avoids enumerating specific rights and obligations. Instead, section 70 is framed in terms of general obligations: *The Adams Mine, Cliffs of Canada Ltd., Manager*, [1982] OLRB Rep. Dec. 1767 at paragraph 27. The question is whether an employer's impugned conduct has defeated the purposes of the Act.

7. Oaklands argues that while the Board has found that an employer's refusal to provide telephone numbers of bargaining unit employees is a breach of the Act in other cases, that determination was based on the facts of those cases. In this case, Oaklands' position and actions with respect to the provision of the telephone numbers of employees in the bargaining unit was in accordance with the terms of the collective agreement. There is no evidence that the Union's representation of the employees in the bargaining unit has been interfered with by Oaklands' refusal to provide telephone numbers until July 2007.

8. Oaklands argues the fact that the parties have been able to reach three collective agreements suggests that its actions have not interfered with the Union's representation of the employees in the bargaining unit. Counsel knows of no cases in which the Board has found that an employer, by acting in compliance with the parties' collective agreement, has interfered with a union's representation of the employees covered by that collective agreement. Thus, in order for the Union to succeed, the Board would have to find that the Disclosure Provisions of the collective agreement are in violation of the Act.

9. Oaklands makes similar arguments in relation to section 17, citing *DeVilbiss (Canada) Limited*, [1976] OLRB Rep. Mar. 49.

Analysis and Decision

10. The first issue is the effect of the Board's decision dated January 23, 2003 and the 2002 Minutes on these proceedings. The Board's decision of January 23, 2003 did no more than give effect to the Minutes. We agree with the Union that the Minutes were expressly without prejudice to either party's position in any other proceeding and that in any event the Minutes are

spent. The issue, therefore, is whether Oaklands' reliance on the Disclosure Provisions of the collective agreement constitutes a breach of section 70 or 17 of the Act.

11. Oaklands is correct in its observation that the Act does not expressly provide, in sections 17, 70 or anywhere else, that a union is entitled to the names, addresses or phone numbers of bargaining unit employees. As in *Adams Mine*, the issue is whether such an obligation arises from application of the general principles of the Act.

12. At issue in *Adams Mine* was an employer's prohibition of any form of canvassing on company property at any time, including non-working time, of employees. The employees were represented by a union. The prohibition was imposed (or at least came to the fore) in response to a campaign by the union to get bargaining unit members to support the New Democratic Party and the political objectives of the Canadian Labour Congress. The union's campaign was conducted by bargaining unit members, on company premises but during non-working time.

13. For the purposes of this decision, *Adams Mine* addressed two issues. The first was the relationship between the proprietary and commercial interests of the employer on the one hand and the statutory rights of employees and unions on the other. The second was the scope of those statutory rights of unions.

14. With respect to the first issue, the Board held that the approach of the Act and the Board's jurisprudence "has been to create a meaningful balance between the statutory rights of employees and the proprietary and commercial interests of employers" and that "to this extent, property rights have been encroached upon by the statute" (see paragraph 18). After a careful analysis, the Board articulated two general, and now well known, principles (at paragraph 22):

(a) No-solicitation or no-distribution rules which prohibit union solicitation on company property by employees during their non-working time are presumptively an unreasonable impediment to self-organization and are therefore invalid; however, such rules may be validated by evidence that special circumstances make the rule necessary in order to maintain production or discipline.

(b) No-solicitation or no-distribution rules which prohibit union solicitation by employees during working time are presumptively valid as to their promulgation, in the absence of evidence that the rule was adopted for a discriminatory purpose or applied unfairly; and no solicitation or no-distribution rules which prohibit union solicitation by non-employee union organizers at any time on the employer's property are valid in the absence of an application for a direction pursuant to section 11 [now 13].

15. The Board then turned to the second issue: what constitutes "union solicitation"? The Board rejected the proposition that solicitation by a union for any lawful purpose was union solicitation protected by the Act. Rather, the Board held that its jurisdiction, and thus protected union solicitation, was restricted to solicitation in relation to the dominant purpose of the Act, collective bargaining, and activity that was necessarily incidental to that purpose. It was in relation to this conclusion that the Board made the observation relied upon by Oaklands in this case:

27. The Act does not spell out each and every right and obligation of labour and management. This Board is left with the task of applying the Act's general language in light of an infinite variety of circumstances which may arise. A rigid scheme of regulation is avoided and flexibility is provided although all within the limitations necessary to effectuate the dominant purpose of the Act.

16. Undoubtedly it is true that for the most part the Act has been framed in terms of general language and the Board's jurisprudence has highlighted the necessity of flexibility in the application of that language. However, as argued by the Union in reply, what is noteworthy for the purposes of the present case is the Board's conclusion that no-solicitation rules which prohibit union solicitation on company property during non-working time are presumptively invalid arises from an analysis of the principles of the Act: there is no section of the Act which expressly provides for this result.

17. In *The Millcroft Inn*, following an extensive analysis, the Board concluded that the rights and obligations attendant upon being the exclusive bargaining agent for employees meant that a union must have the ability to communicate with those employees. The Board stated, at paragraph 33:

The establishment of a collective bargaining relationship between a union and an employer entails a change in the employment relationship between the employer and its workers. The change is from an individual to an [sic] collective basis of the relationship – the union becomes the agent for the employees and, as such, it is entitled to speak on their behalf as if they were together negotiating as a group. The individual employees may not make their own individual bargains or deals with the employer. To that end, the union is entitled to take full instructions from them and to represent them. For the union to do so, it must be able to communicate effortlessly with the employees. The alternative methods offered by the employer do not meet that need. They enable the union to obtain the information, but the methods are such as to amount to an obstacle in the path of the union obtaining what it wants. Obstacles have their social value, but not in this case. Here they serve merely to frustrate the union's capacity to do its job properly. The union needs the information and it should have it without the need to pass through the obstacles suggested by the employer.

18. A union's communication with members of a bargaining unit is thus an activity which is protected by section 70 of the Act. The right and obligation to represent necessarily includes the right to communicate with the employees represented. Interference with the union's ability to communicate with members of the bargaining unit will thus be a violation of the Act, absent a legitimate business purpose: see *The Millcroft Inn* at paragraph 16.

19. The modalities of communication change over time. One common denominator, however, is the need for the names of the employees in the bargaining unit. It is interesting to note that Oaklands does not challenge a union's right to be provided with the names of the employees in the bargaining unit notwithstanding, as it observed in its argument, the absence of an express statutory provision to that effect.

20. In the present day, the telephone remains a significant modality of communication. This is not to say that it will always be so. It is interesting to note that even in 2001, in *Ottawa-Carleton District School Board*, the Board mused that email addresses might be a more effective, and less personally intrusive, means of communication between a union and its members (see paragraph 25). It may well be that "facebook" or "twitter" are now equally, and even more important, means of communication than the telephone. The telephone remains, however, an important means of communication.

21. Oaklands argues that the Board's determination in other cases that an employer was obliged to provide the union with telephone numbers for members of the bargaining unit was based on the facts of those cases. However, a review of the cases provided by the union suggests that the determinations were not fact driven. In *The Millcroft Inn* the facts are described in paragraphs 4 – 7 of the decision. In *Ottawa-Carleton District School Board* the Board indicates, at paragraph 2, that the parties agreed that the matter could be determined on the basis of written submissions without a hearing; that is, there was no evidence before the Board. In *The Alcohol and Gaming Commission of Ontario*, the evidence is summarized at paragraphs 3 and 4. In *York University*, the facts are stated in paragraphs 3 – 8. In each of these cases, the union's request for the telephone numbers of employees derived from the fact that it was the bargaining representative of the employees. In none of these cases is there any reference to evidence of actual interference to the union as a result of the employer's refusal to provide the telephone numbers.

22. In *Baron Metals*, the employer was ordered to provide telephone numbers of bargaining unit employees to a union which was attempting to organize a group of employees. This order was made to remedy the chill to the union's organizing drive caused by the employer's breaches of the Act. There is no discussion, however, of why the provision of telephone numbers specifically was required in order to accomplish this result.

23. *Canadian Niagara Hotels*, uniquely, contains a review of evidence which would support the conclusion that employer's refusal to provide telephone numbers was causing actual interference to the union's ability to represent the members of the bargaining unit. This evidence was relevant to the first issue determined by the Board: whether it should exercise its discretion to inquire into the complaint given a previous decision of the Board not to inquire into the same complaint between the same parties. The Board concluded (at paragraph 19) that "the circumstances then were not as they are now" and decided to inquire into the complaint. In its consideration of the merits of the complaint, however, the Board made no reference to any of this evidence in reaching the conclusion that the employer's conduct constituted improper interference with the union, stating (at paragraph 21) that "the union is the best judge of its own interest" in determining how to effectively communicate with its members.

24. In each of these cases, the union's need for the telephone numbers in order to facilitate communication with employees was presumed. In the absence of a counterbalancing business purpose, the employer was directed to provide the telephone numbers. In this respect, these cases are similar to *Adams Mine*, where no-solicitation rules which prohibit union solicitation on company property during non-working time were held to be presumptively invalid absent evidence of special circumstances from the employer.

25. It might be argued that the difference between a requirement that an employer provide telephone numbers of employees in the bargaining unit and a requirement that an employer permit

union solicitation on company property during non-working time is that the former requires a positive action on the part of the employer. In our view, this is not a compelling argument.

26. In *The Millcroft Inn*, the Board founded the positive obligation of an employer to provide telephone numbers of employees in the bargaining unit to the union on the necessity of ensuring that the union was placed in an equal bargaining position with the employer. It stated, at paragraph 31:

A consequence of the union possessing exclusive bargaining status on behalf of the employees is that the union is placed in an equal bargaining position with the employer in its collective bargaining relationship. To the extent that the employer has information which is of value to the union in its capacity to represent the employees (such as their names, addresses and telephone numbers), the union too should have that information. The employees' privacy rights are compromised (no doubt legitimately) by the employer having details of their names, addresses and telephone numbers. The union's acquisition of that information would be no greater compromise, nor any less legitimate.

27. This conclusion finds support in the observation in *Adams Mine* that giving effect to the statutory rights of employees, and unions, necessarily encroaches upon the property rights of employers. Records of information on the telephone numbers of employees in the bargaining unit in the possession of an employer are the property of the employer. It could be argued, on the basis of *Adams Mine*, that the union has the right to enter an employer's offices for the purposes of obtaining that information. Clearly, in the absence of some extraordinary set of circumstances, imposing a positive duty upon the employer to instead provide such information will be less intrusive and less of an encroachment upon the rights of the employer.

28. What significance, then, attaches to the fact that in this case the parties had agreed to a specific Disclosure Provision governing when and whether the Union will receive the telephone numbers of employees under the terms of the collective agreement?

29. The Union, as noted, argues that while the Disclosure Provision governs the "day to day" relationship of the parties, it is entitled to the telephone numbers as a matter of statutory rights under sections 17 and 70. It argues that even if it were possible to contract out of its statutory rights, nothing in the collective agreement purports to do so. Further, if the collective agreement purported to limit the access of the Union to the telephone numbers, it cannot do so. Thus, whether or not the Union is entitled to the information under the collective agreement, it seeks to assert its rights under sections 17 and 70. The Union argues that the only limit on those rights arises from the fact that the Board has discretion not to inquire into a complaint that they have been breached. Thus, if the Union's request were frivolous or vexatious it could not be enforced because the Board would not inquire into a complaint that a refusal of that request constituted a breach of the Union's rights.

30. Oaklands, by contrast, argues that it knows of no cases in which the Board has found that an employer, by acting in compliance with the parties' collective agreement, has interfered with a union's representation of the employees covered by that collective agreement. Thus, in order for the Union to succeed, the Board would have to find that the Disclosure Provisions of the collective agreement are in violation of the Act.

31. The Disclosure Provisions require Oaklands to provide the Union with contact information of certain employees once per year without request by the Union. They need not be construed as purporting to prohibit Oaklands from providing the Union with contact information for all employees at other times if requested by the Union. It is not necessary, therefore, for the Board to find that the Disclosure Provisions are in violation of the Act in order for the Union to succeed. This is similar to the conclusion reached by the Board in *Canadian Niagara Hotels*, at paragraph 20, with respect to the effect to be given to a collective agreement provision relied upon by the employer in that case.

32. That is not to say that the Disclosure Provisions in the collective agreement are irrelevant. They reflect the settled expectations of the parties as to what contact information the Union will be entitled to receive and when in order to permit it to communicate with the employees in the bargaining unit in furtherance of its statutory rights and obligations to represent those employees during the term of the collective agreement. The Board might have refused to inquire into a mid-term complaint by the Union that Oaklands had refused a request for more or more frequent contact information, absent proof by the Union that such information was required in order for it to exercise its representational rights and fulfill its obligations. The Union's request here, however, was not mid-term. It was made in the context of giving notice to bargain a new collective agreement.

33. The Act imposes additional rights and obligations upon a union in relation to collective bargaining. These additional rights and obligations are reviewed in *Canadian Niagara Hotels* at paragraph 24. Simply stated, as a practical matter during collective bargaining a union has a greater need to be able to freely communicate with all the members of the bargaining unit in relation to the bargaining, possible strikes and lockouts and the conduct of ratification votes.

34. Given that the Union's request for the contact information was made in the context of collective bargaining, there being no evidence of a counterbalancing business purpose, we find that Oaklands' refusal to provide that contact information was a violation of section 70 of the Act.

35. Given our conclusion, it is not necessary to address the parties' alternative arguments with respect to whether Oaklands' refusal constitutes a violation of the duty to bargain under section 17 of the Act.

36. The Union has requested a declaration that Oaklands violated the Act, an order directing Oaklands to provide the contact information and an order directing the posting of a Notice to Employees. Given our conclusions, we are prepared to make the declaration requested. Given the history of this matter, more fully developed in documents attached to the Agreed Statement of Facts and the oral submissions of the employer, we also think it would be useful from the perspective of both parties to direct the posting of a Notice to Employees so that those who have exercised their right under the collective agreement to object to the provision of their contact information to the Union on an annual basis will be advised of the Board's conclusion that the Union is entitled to that information in the context of collective bargaining. We also think it would be useful to direct the posting of these reasons for decision. Given, however, that the 2007 round of collective bargaining which gave rise to this complaint has been concluded we decline to order Oaklands to provide the Union with the contact information it requested.

Disposition

37. For reasons stated, the Board makes the following orders and directions:

1. The Board declares that Oaklands violated section 70 of the Act in refusing to provide the telephone numbers for all employees in the bargaining unit in response to a request by the Union within the context of collective bargaining.
 2. The Board orders Oaklands to post this decision and the Notice to Employees attached to it as Appendix "A" on employee notice boards where they are likely to come to the attention of the employees affected by this decision. They are to remain posted for a period of 30 days from the date of this decision.
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Appendix "A"
The Labour Relations Act, 1995
NOTICE TO EMPLOYEES

Posted by order of the Ontario Labour Relations Board

Section 70 of the Labour Relations Act, 1995 provides:

No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

On a complaint by the Ontario Public Service Employees Union, the Board has found that Oaklands Regional Centre violated section 70 of the Act in refusing to provide the telephone numbers for all employees in the bargaining unit in response to a request by the Union within the context of collective bargaining.

The Board's reasons for its decision have been posted along with this Notice to Employees.

This is an official notice of the Board and must not be removed or defaced.

This notice must remain posted for 30 consecutive days.

DATED this 10th day of September, 2010.

2154-08-JD; 2757-08-JD; 2758-08-JD; 2759-08-JD Carpenters' District Council of Ontario, Applicant v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 736; **PCL Constructors Canada Ltd.** and Elite Building Group Inc., Responding Parties; Labourers' International Union of North America, Local 837, Applicant v. PCL Constructors Canada Inc. and Carpenters District Council of Ontario, Responding Parties v. Elite Building Group Inc., Intervenor; Universal Workers' Union, Labourers' International Union of North America, Local 183 and International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721, Applicants v. PCL Constructors Canada Inc. and Carpenters District Council of Ontario, Responding Parties v. Elite Building Group Inc., Intervenor; Labourers' International Union of North America, Local 506 and International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721, Applicants v. PCL Constructors Canada Inc. and Carpenters District Council of Ontario, Responding Parties v. Elite Building Group Inc., Intervenor

Construction Industry – Jurisdictional Dispute – PCL subcontracted the work in dispute, the forming of walls by insulated concrete formwork (ICF), which is a relatively new building method or technology, to Elite, a subcontractor bound to a collective agreement with the Carpenters – The applicant Locals asserted that the work in dispute represented their respective traditional portion of concrete formwork in the ICI sector of the construction industry, while the responding parties asserted that virtually every aspect of the ICF construction differed from traditional concrete formwork – The Board found that the forming process reflected by ICF technology was not so markedly different than that reflected by traditional concrete forming that the wholesale rejection of area practice evidence with respect to the installation of traditional concrete forms was warranted – Accordingly, the Board found it appropriate to consider the area practice relied upon by the applicant Locals and found it overwhelmingly supported the assignment of work in dispute to the applicants – The totality of the evidence of employer practice also suggested that the applicants had a better claim to the assignment of work than did the Carpenters – After finding the other factors at best neutral, the Board was satisfied that there were compelling reasons to find in favour of the applicants notwithstanding the absence of a collective agreement relationship between each of them and Elite – The Board found the work in dispute ought to have been assigned to the applicants members

BEFORE: *Lee Shouldice*, Vice-Chair.

APPEARANCES: *Doug Wray, Ziggy Pflanzner and Rick Harkness* for Carpenters' District Council of Ontario; *Robert Gibson and Benjamin Barnes* for International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721, Universal Workers' Union, Labourers' International Union of North America, Local 183, Labourers' International Union of North America, Local 837, Labourers' International Union of North America, Local 506 and International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 736; *David L.W. Francis and David Ogryzlo* for PCL Constructors Canada Inc.; *Chris Lloyd and Patricia Duggan* for Elite Building Group Inc.

DECISION OF THE BOARD: October 6, 2010

The Nature of These Proceedings

1. These proceedings consist of four work assignment disputes filed with the Board pursuant to section 99 of the *Labour Relations Act, 1995*, S.O. 1995, c. 1, as amended ("the Act").

2. These proceedings involve work jurisdiction claims made by the five local unions (International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 ("Local 721"), Universal Workers' Union, Labourers' International Union of North America, Local 183 ("Local 183"), Labourers' International Union of North America, Local 837 ("Local 837"), Labourers' International Union of North America, Local 506 ("Local 506") and International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 736 ("Local 736")) relating to three different ICI sector work sites in three different Board Areas – Board Areas 9, 18 and 26. Although one of the five above-referenced unions is not, strictly speaking, an applicant in any of these proceedings (it is, instead, a responding party), I will refer to the five local unions collectively in this decision as "the applicants".

3. The projects at the centre of the dispute in these proceedings are three new branches of the Bank of Montreal – one in Oshawa, one in Bradford, and one in Waterdown. In each case, insulated concrete formwork ("ICF") was utilized to form the walls of the building. As will be outlined in more detail below, ICF is a relatively new building method or technology. The general contractor for each of the buildings was PCL Constructors Canada Inc. ("PCL"), and in each case PCL subcontracted the work in dispute to Elite Building Group Inc. ("Elite"). Elite is a single-trade contractor bound to a collective agreement with the Carpenters District Council of Ontario ("the Carpenters"). Elite assigned the work in dispute to members of the Carpenters. The applicants claim that work. For the purposes of this decision, I will refer to the Carpenters, Elite and PCL collectively as the "responding parties".

Events Giving Rise to the Work in Dispute

4. During 2008, work commenced on three separate PCL projects involving the construction of bank branches for the Bank of Montreal. As noted above, in each case PCL subcontracted the work in dispute to Elite. In May, 2008 Local 183 grieved against PCL for the failure to use union personnel to perform the work in dispute on the Oshawa project. That grievance was referred to the Board, as was a similar grievance relating to the same project that was filed by Local 721. Similarly, in May, 2008 Local 837 grieved against PCL for the failure to use union personnel on the Waterdown project. It too referred that grievance to the Board. Local 736 followed thereafter with a grievance for the failure to use its rodmen members on that project, and referred it to the Board for arbitration. Subsequently, Local 506 grieved against PCL for failure to use union personnel on the Bradford project. That grievance was referred to the Board for arbitration. A separate grievance filed by Local 721 with respect to that same project was also referred to the Board for arbitration.

5. The parties agreed to adjourn all of the grievance referrals in order to apply to the Board pursuant to section 99 of the Act. These four jurisdictional disputes were the result.

The Work in Dispute

6. The specific work in dispute claimed by Locals 183, 506 and 837 consists of the following:

- Traffic control;
- Unloading and handling of materials by hand or using the forklift and/or bobcat;
- Stockpiling of materials by forklift, bobcat and hand;
- Excavation for the footings at the site, including hand digging and any plate tamping of the footings, and grade checks;
- Tending of Carpenters erecting the footings and forms;
- Checking grade of footings;
- Swamping for the concrete truck or crane/pumpcrete equipment;
- Pouring of concrete including the handling of the chute (or boom) of the concrete truck (pumpcrete crane) as applicable;
- Finishing and vibrating the concrete in the forms;
- Stripping of the wooden forms used for the footings;
- Movement of materials from the stockpiles to the point of installation;
- Tending Carpenters during the erection of the ICF block forms;
- Pouring concrete into the ICF blocks;
- Vibrating and finishing the concrete at the top of the walls;
- Removing bracing for the walls; and
- General clean up.

The specific work in dispute claimed by Iron Workers' Locals 721 and 736 consists of all work in connection with the installation of reinforcing steel, including all unloading, handling, cutting, bending, welding, tying and placement of the reinforcing steel for the footings and walls.

7. Put briefly, the applicants assert that the work in dispute represents their respective traditional portion of concrete formwork in the ICI sector of the construction industry. They assert that the assignment of the work to members of the Carpenters represents a radical departure from the established jurisdictions of the various trades. Furthermore, the applicants assert that there is no difference in the work tasks that were performed when compared with traditional concrete formwork, and that there is nothing that can justify the marked departure from the overwhelming area and employer practice in respect of the assignment of the work in dispute as it relates to concrete formwork.

8. The responding parties disagree. They assert that the work in dispute is not the same as traditional concrete formwork. They state that virtually every aspect of ICF construction differs from traditional concrete formwork, and that the assignment made to the Carpenters was entirely appropriate.

9. I note here that during the pre-consultation conference the applicants agreed to file a reply brief on December 11, 2009. By agreement of the parties, this date was pushed back to February 19, 2010. The applicants did not deliver and file their reply brief at that time, and in fact waited until May 3, 2010, eight days before the consultation, to deliver that brief to the responding parties and to file it with the Board. Counsel for the Carpenters wrote to the Board immediately

after receiving the reply brief and submitted that the Board ought to disregard the submissions contained in the reply brief on two grounds – first, that they were filed grossly out of time, and second, that the submissions were not proper reply.

10. At the outset of the consultation, I indicated to counsel for the Carpenters that I was prepared to accept and consider the reply brief filed by the applicants, notwithstanding its late filing. I indicated to counsel that I considered the substance of the brief to be proper reply, and that even though it was delivered and filed extremely late, there was nothing in it that counsel for the applicants could not just present to the Board during argument. In that light, disregarding the written brief would serve little purpose. I asked counsel for the Carpenters if he required an adjournment to respond to anything in the reply brief. He indicated that he did not need an adjournment. The consultation then continued.

Insulated Concrete Forms and their Installation

11. At this stage, it is appropriate to describe the steps utilized at the three sites in order to install ICF blocks. The parties largely agree in their descriptions of how that work was performed.

12. The work commenced with the job start up and the layout and plotting of the structure to suit the ICF system. The materials (ICF blocks, the ICF alignment and bracing systems, reinforcing steel and other miscellaneous materials) arrived at the site, typically on a tractor trailer. The blocks are light weight, are usually shipped shrink-wrapped, and can be carried by hand. Other materials were unloaded by bobcat and/or forklift. The materials were typically stockpiled in the middle of the building perimeter by hand or by use of the equipment identified immediately above.

13. The footings were then excavated. At each of the three projects, the main excavation work was subcontracted to Belmont Concrete Finishing Co. Limited ("Belmont"). Belmont is a single-trade contractor bound to the Labourers. Belmont performed the work of excavating the footings by assigning that work to members of the Labourers union. That work is not in dispute in these proceedings. In addition to the excavation performed by Belmont, employees of Elite checked the grade of the footings and adjusted that grade by hand digging. Next, the footings were laid out for the purpose of accepting the ICF blocks. Conventional wood forms for the footings were transported and unloaded at the location of the footings, and the forms were built to a pre-determined height.

14. The reinforcing steel was then carried to the location of the form and was installed. Dowels were installed that are specific to the ICF system in order to allow for the installation of the first and second rows of ICF blocks. Once the forms had been built for the footings, and the reinforcing steel had been installed, the concrete arrived on site. Traffic control was required. The footings were then poured. Pouring the concrete for the footings required the operation of the chute of a concrete truck or pumpcrete. As the concrete was poured it was vibrated using a traditional concrete vibrator. The concrete was then finished to within ¼ inch tolerance. The conventional wood forms were then stripped and removed for future use.

15. At this stage, the layout for the ICF blocks was completed. The ICF blocks were brought from the stockpile to the locations where they were to be installed. A metal track or guide was attached to the footings to accept the first course of ICF blocks. The ICF blocks were

installed in accordance with the manufacturer's guidelines and installation methods. In that regard, the ICF blocks were placed with alternating corners/forty-fives in order to allow for all subsequent courses and to ensure proper joint locations. After the first course was completed, all openings within the wall (for example, doors, vents, services) were located and cut to ensure that the rough stud openings were exact. Any required modifications were effected at this stage in order to ensure that the integrity of the system was not undermined by the openings.

16. The reinforcing steel was then moved to the location where the ICF blocks were being installed. After being cut to appropriate length and bent to meet any applicable specifications, horizontal rebar was installed by way of snapping it or clipping it into a plastic web located inside the ICF blocks. There was little cutting and no welding.

17. The second and third courses of the installation of the ICF blocks were then completed in the same manner as the first course. These second and third courses were off-set from the first and second course, respectively, in order to ensure the integrity of the system. During the installation of the second and third courses horizontal rebar was installed into the ICF blocks in the same manner as it was installed with respect to the first course.

18. At this point, the ICF alignment and bracing systems (which included an access and guard rail system) were moved to their proper locations and installed in accordance with the manufacturer's specifications and applicable health and safety legislation. Spacing along the wall, the type of materials used (screw sizes and lengths) to attach the system to the ICF blocks, the type of anchoring materials, and the height of the access platform and the guard rail system were all monitored and installed as required. The walls were then aligned and plumbed. At that point, the remaining additional courses were installed (in accordance with the process identified above), up to the anticipated height of the wall for the first concrete pour. All openings were completed by forming them with a "buck", which is constructed of wood on site, and which was cut and either nailed or screwed into place at each opening in the wall. Any additional supports, strapping and bulkheads were then installed.

19. The next stage involved locating, moving to the installation location, and installing any cast-in-place items that occurred within the wall system. Any modifications of the wall system that were required to ensure the integrity of the ICF system not affected by the placement of the cast-in items were then made. Once this was completed, the height of the wall was checked with a laser or builder's level. The ICF blocks were then cut at the proper wall height. The walls were then realigned and string lines were placed in preparation for the pouring of the concrete into the forms.

20. At this stage, the vertical reinforcing steel was moved to the proper location from the stockpile and was installed into the form after being cut or bent to specifications. The reinforcing steel was installed in accordance with structural requirements and to suit the ICF system. The vertical rebar was placed into a pocket and overlapped with the dowels at the bottom of the wall in the footings. The vertical rebar was tied at the top with wire or a plastic cable tie.

21. Once the reinforcing steel was added to the forms, the concrete arrived on site. Traffic control was again required. The concrete was poured into the forms using a pumpcrete truck or a truck-mounted crane. The boom of the pumpcrete truck or truck-mounted crane was handled in order to direct the concrete into the ICF blocks. During the course of the pouring of the concrete,

the alignment of the walls was continually checked by using the alignment and access system. At that same time, the concrete was continually vibrated.

22. It is possible for there to be difficulties during the course of the concrete pour. If the concrete is not placed with proper consideration for the specific wall in question, there is the possibility of a "blowout". The ICF installer must be constantly aware and make ongoing adjustments during the course of the pour to prevent blowouts. A special low cycle concrete vibrator with a one inch or smaller diameter head was used. The concrete was finished at the top of the wall where the ICF block was cut. Reinforcing steel dowels were added for the continuation of the system. After the concrete cured, the alignment, access and guard rail system was disassembled and removed, all materials were removed from site, and clean up was performed. The ICF block is not stripped, like traditional formwork, and the block becomes part of the insulation system of the building.

Factors Considered by the Board

23. The Board has established a number of factors that it normally considers in order to resolve jurisdictional disputes that arise in the construction industry. The factors normally considered by the Board are the following:

- (a) collective bargaining relationships;
- (b) trade agreements;
- (c) employer practice;
- (d) area practice;
- (e) safety, skills and training; and
- (f) economy and efficiency.

Other factors or considerations may also be taken into account by the Board. The Board has stated many times that the significance of any one of the factors identified above will depend upon the circumstances of each proceeding (see, for example, the discussion by the Board in *Eco-dyne Limited*, [1997] OLRB March/April 197). In certain cases, some of the factors will be of little importance. In others, those same factors will be determinative. In this particular proceeding, the trade agreements factor has no real significance for the purpose of resolving the dispute. I consider each of the relevant factors below.

Onus

24. The onus of establishing that the work assignment was incorrectly made lies with the applicants. In my view, the appropriate standard of proof that must be established by the applicants is that stated by the Board in *KEW Steel Fabricators Ltd.*, 2006 CanLII 2118 (ON LRB). The applicants must demonstrate, on a balance of probabilities, that the work in dispute should have been assigned to them, having regard to all of the relevant factors.

An Initial Observation

25. At this juncture it is necessary to refer to an important element of these proceedings that will have an effect upon the relevance of and/or the weight to be attributed to some of the above-referenced factors. In their initial brief the applicants requested from the Carpenters a copy

of the collective agreement it has with Elite that applied to the work in dispute. In its documentary brief the Carpenters produced that collective agreement. The collective agreement is entitled "All Sector Collective Agreement" (the "All Sector Agreement") and was executed by both Elite and by the Carpenters District Council of Ontario on its own behalf and on behalf of its affiliated bargaining agents. The All Sector Agreement is dated April 12, 2007. Its terms reflect that Elite is a construction company that specializes in building ICF structures, and accordingly speaks specifically to ICF work. In the All Sector Agreement Elite recognizes a claim by the Carpenters to "the total installation of all Insulated Concrete Forms and related cleanup". Elite agrees with the Carpenters in the All Sector Agreement that whenever it hires employees to perform work other than ICF work, they will meet to negotiate wages and other monetary benefits for such employees.

26. The All Sector Agreement binds Elite to the Carpenters' Provincial ICI collective agreement for all carpentry work performed in the ICI sector of the construction industry. However, the All Sector Agreement ultimately qualifies the obligations owed by Elite to the Carpenters for ICI sector work. It provides that while performing ICF work any employees covered by the Carpenters Provincial ICI collective agreement are to be paid the wages and monetary benefits set out in Schedule 1 to the All Sector Agreement. Schedule 1 of the All Sector Agreement provides for journeyman and apprentice rates that are markedly lower than the rates contained in the Carpenters Provincial ICI collective agreement, and for no benefits other than statutory vacation pay. For the purpose of comparison, under the All Sector Agreement the all-in rate for a journeyman carpenter on May 1, 2009 was \$26.00 per hour. The equivalent all-in hourly rate for a journeyman carpenter performing work under the Local 27 Appendix of the Carpenters Provincial ICI collective agreement in Board Area No. 18 on May 1, 2009 was \$42.16, having regard to the hourly rate (\$30.54), vacation and holiday pay (\$3.05), health & welfare plan contributions (\$2.74) and pension obligations (\$5.83). The all-in hourly rate for a construction labourer performing work under the Local 506 Appendix of the Labourers Provincial ICI collective agreement in Board Area 18 on May 1, 2009 was \$39.78.

27. Subsection 162(1) of the Act provides that there can only be one provincial agreement covering members of the Carpenters who work in the ICI sector. Subsection 162(2) of the Act provides that the Carpenters may not conclude a second collective agreement that affects employees covered by its Provincial ICI agreement. This is exactly what the All Sector Agreement does. Perhaps not coincidentally, Elite began its run of successful bids for PCL subcontracts to perform the ICF work on the Bank of Montreal branches shortly after it signed the All Sector Agreement with the Carpenters.

28. To the extent that certain factors taken into account by the Board in determining work assignment disputes appear at first instance to support the position taken by the Carpenters in these proceedings, the strength of that support is severely undermined by the fact that Elite and the Carpenters have struck a compensation bargain that is contrary to subsection 162(2) of the Act, at least to the extent that it applies to ICI sector work such as these three projects. It is evident that the Carpenters wanted to secure for its members as much of the ICF work in the ICI sector of the construction industry as it could. To that end, it found a subcontractor that was capable of performing the work and was willing to sign a voluntary recognition agreement. It then negotiated a collective agreement with that subcontractor covering ICI sector work that contained less beneficial terms of employment for its members than the terms contained in its Provincial ICI agreement.

29. The All Sector Agreement is a bargain that provided Elite with an overwhelming economic advantage over other unionized companies bidding for ICF work tendered by PCL in the ICI sector of the construction industry. Elite's success in bidding for ICF work since the first half of 2007 suggests that the All Sector Agreement provided Elite with the financial edge it needed. Its bids would have been considerably lower than those of other companies bidding for the same work. To the extent that the cost of performing the work in dispute is reflected in the "economy" factor considered by the Board, Elite is a far more economical choice for PCL than other contractors. Elite could always plan to populate jobs more heavily at a lower cost, and dedicate the necessary workers to the project to ensure that the job was completed on time. Elite therefore can lay claim to be a far more efficient contractor than its competitors, and far more reliable. In these circumstances, no one would be shocked to learn that a general contractor such as PCL might express a preference for subcontracting the work in dispute to Elite, a subcontractor that can continually underbid its competitors, get the job done on time, and make enough money that it subsequently returns looking for more work at a cost-effective price. The difficulty, of course, is that the underlying basis for Elite's impressive record of economy and efficiency relative to its competitors is its unlawful collective agreement with the Carpenters.

30. During the course of argument counsel for the applicants asserted that the Carpenters ought not to be entitled to purchase its jurisdiction over the work in dispute by entering into an unlawful collective agreement with Elite, one that would trigger a desire on the part of PCL to assign all of the work in dispute to Elite. I agree. As a result, to the extent that some of the factors below favour the position taken by the Carpenters as a consequence of the unlawful collective agreement it has negotiated with Elite, I have discounted those factors accordingly.

Area Practice

31. The parties approached the question of area practice from fundamentally different perspectives. The applicants filed with the Board declarations from former and present members and Business Representatives of their respective locals that establish that the overwhelming practice in Board Areas No. 9, 18 and 26 is to assign the work in dispute on a traditional concrete forming project in the ICI sector of the construction industry to members of the applicants. Over 100 projects in which the work in dispute was assigned to the applicants in Board Areas No. 9, 18 and 26 were identified by the applicants in their materials. The applicants assert that the decision made at each of the three job sites in question to assign all of the work in dispute to members of the Carpenters departed radically from the well-established and overwhelming area practice reflected by their brief.

32. The Carpenters, supported by PCL and Elite, do not dispute the area practice evidence relied upon by the applicants. The responding parties simply assert that none of the applicants' area practice evidence matters. They state that the applicants are wrong in their assertion that the work in dispute is the same as that performed in traditional concrete formwork. They assert that the work in dispute involves ICF technology, a different and relatively new building method, and therefore state that none of the area practice evidence relating to traditional concrete forming is relevant. The responding parties note that ICF construction differs from traditional concrete formwork in that the product that forms the walls is not stripped after the concrete is poured and cured, but instead remains as part of the wall structure. As a result, the product that forms the wall ultimately serves a dual function, first as a form, and then as insulation. The responding parties

assert that the consequence of these differences is that the area past practice relied upon by the applicants is not relevant.

33. In support of their position, the responding parties rely upon the decision of the Board in *Dineen Construction Corp.*, [2005] OLRB Rep. July/August 565. In that case, a work assignment dispute arose as a result of the development of a new technology in the construction of load bearing walls, namely the Roycet system of manufactured rigid polymer modules. The dispute arose because Carpenters Local 27 characterized the Roycet system as concrete forming construction, and Local 506 characterized that same system as the installation of pre-cast concrete panels. The Roycet system at the project in question consisted of modules or units that were both manufactured and cut to size off-site. The finished product was then delivered to the construction site for assembly by the on-site crew. Once the units were in place and secured, rebar was inserted into the cells of the unit and concrete was poured into each unit. The top of the unit was braced against the ground using 2 x 4 lumber, and angle iron was placed on top of the wall for purposes of alignment and structural integrity. Once the concrete was cured, the construction of the wall was complete, and the bracing was removed. The Roycet system components, unlike concrete forms, remained in place as the finished walls. Unlike pre-cast concrete panels, the components were erected to receive and hold poured concrete while the concrete dried and hardened.

34. The work in dispute in the *Dineen Construction* proceeding was assigned by a subcontractor to members of Local 506. Essentially, Local 27 made the very same argument in *Dineen Construction* that the applicants make in this proceeding. Local 27 argued that the carpentry portion of the work should have been assigned to its members in accordance with the usual division of work jurisdiction that occurs in the performance of traditional concrete formwork in the ICI sector of the construction industry. Local 27 did not claim the installation of rebar, the placing of concrete, any curing or vibrating of concrete on the unit, and the washing of the exterior of the units. Local 506, on the other hand, argued, like the Carpenters do in the instant case, that the construction of walls using the Roycet system was not analogous to concrete forming construction.

35. The critical passages of the *Dineen Construction* decision are at paragraphs 20 to 23, wherein the Board makes the following observations:

20. The purpose and function of concrete forming construction is to create a concrete structure shaped by the forms used to hold the concrete in place while it cures and hardens. I have concluded that using the Roycet System is not engaging in concrete forming construction since it does not result in a concrete structure. Rather, the Roycet System itself comprises the finished structure.

21. Although the Roycet System holds concrete in place, its function is not to shape or form concrete. The Roycet System is a load bearing wall system. The purpose of the erection and installation of the Roycet System is to have a finished product that is a shiny, straight, plastic wall. That shiny, straight plastic wall is created off-site at the Roycet manufacturing facility. The wall is pre-assembled off site into wall sections, with the openings for doors and windows done as a part of the manufacturing process. The on-site work is the assembly (I note in that regard that the units and braces are tagged for assembly) and erection of those pre-assembled units into their appropriate locations in the building. No formwork is required to

achieve the final shape of the wall. The Roycet System units are neither removed nor are they available to be reused. The shape of the finished wall is "formed" at the Roycet manufacturing plant, not at the site.

22. ARG in its submissions points out the differences between formwork that may be constructed on or off site and the Roycet System. ARG argues that the Roycet System units are made from extruded polymer with internal insulation. The Roycet System is a pre-fabricated, pre-cut extruded product, which cannot be constructed on site. It is a panel system which is different from that of the typical concrete form in that:

- a) it cannot be constructed on site;
- b) does not need any fastening method to hold the two sides together
- c) it does not require insulation to be placed on site
- d) it is a single stage application rather than a two or three stage application: and
- e) the panels remain as both the exterior and interior of the building and/or room and are not removed as is the case with forms.

23. The Roycet System is, in my view, clearly a new type of construction technology that combines features of concrete forming construction and pre-cast concrete construction in the creation of load bearing walls. It is, as ARG argued, a unique system used in the construction of walls for a building. The Roycet System competes with both walls built using concrete forming and pre-cast panels. ARG has been constructing walls using the Roycet System with members of Local 506 exclusively since 1996.

36. The responding parties argue that the conclusion reached by the Board in *Dineen Construction* is consistent with their assertion that the area practice relied upon by the applicants in these proceedings is of no significance. It was asserted that in *Dineen Construction* the Board concluded that the Roycet system was new technology and different from traditional concrete formwork, and that the claim made by Local 27 based on traditional work jurisdictions was therefore rejected. Here, it was argued, there is technology used that is also different than that used in the installation of traditional concrete formwork. Forms are not stripped after the concrete is poured and cured, but instead the forms remain as part of the wall structure. The Carpenters argue that virtually every aspect of ICF construction differs from traditional concrete formwork, including the materials and tools used, the tasks involved, the skills required, and how the work is assigned. As a result, it is submitted that area practice submitted by the applicants that is based upon the installation of traditional concrete forming ought to have no weight.

37. I disagree with the position taken by the responding parties on this issue. In my view, the forming process reflected by ICF technology is not so markedly different than that reflected by traditional concrete forming that the wholesale rejection of area practice evidence with respect to the installation of traditional concrete forms is warranted. Carefully considered, the evidence before the Board does not establish that ICF construction differs from that of traditional concrete formwork in any meaningful sense.

38. First, it is important to note that there was little or no evidence filed by the responding parties to suggest that many of the tasks included within the work in dispute were performed differently as a result of the use of ICF technology. By way of example, the responding parties provided no evidence to suggest that work tasks of traffic control, the unloading and handling of materials, the excavation for the footings performed at the site, and the stripping of the wooden forms used for those footings were in any way affected or altered by the use of ICF technology. The rebar work performed to reinforce the footings formed to hold ICF blocks is almost identical under ICF technology to that performed during traditional concrete formwork.

39. When considered closely, the remainder of the work in dispute is not performed in a radically different manner when ICF technology is used. In support of their position, the responding parties relied mainly upon a declaration signed by Vic Bodnar, the Carpenters' Provincial Training Co-ordinator for Ontario, and a comprehensive ICF training manual attached to that declaration. The responding parties assert that the declaration filed by Mr. Bodnar supports the proposition that almost every aspect of ICF construction work differs from traditional concrete formwork.

40. Mr. Bodnar states in his declaration that ICF construction involves new and different materials and tools from those used in traditional concrete forming construction, and refers the reader to certain passages from the ICF training manual. With respect to those materials, the passage cited by Mr. Bodnar notes that in ICF concrete forming the blocks are made of shells of foam rather than wood, and that there are foam sections called webs that connect the shells of an ICF block together. That same passage from the training manual identifies the components of reinforced concrete used with ICF blocks, none of which appears to be any different than the components of reinforced concrete utilized in traditional concrete formwork.

41. With respect to the new and different tools used in the installation of ICF blocks, the relevant portion of the passage of the training manual on tools referred to by Mr. Bodnar in his declaration provides as follows:

Most of the tools used for building ICF's are familiar construction tools. An ordinary handsaw is fine for many of the cuts in ICF foam and ties. If practical, a table saw or band saw or radial arm saw at the jobsite makes precise, fast cuts through ICFs. Band saws can cut through a whole block in a single pass. A reciprocating saw is handy for making large cutouts in the formwork when it is already assembled ...

A hot knife is a heated electrical tool designed to cut foam. It makes especially clean, precise cuts of all types. *Low-expansion foam adhesive* applied with a *foam gun* and *fibreglass reinforced tape* are other specialized tools used in ICF construction.

A *rebar cutter-bender* makes the jobs of bending rebar and cutting it to length fast and easy. Either *tie wires* or *cable ties* may be necessary to hold rebar securely in place. Some ICF systems have special grippers or tables on their ties to hold rebar instead.

Basic framing and carpentry tools including string lines, chalk lines, and levels are needed to lay out, plumb and level walls accurately. (emphasis in original)

42. Mr. Bodnar also identifies in his declaration the “new method of construction” of concrete forms, and sets out in some detail the typical steps or processes used to install ICF blocks that are outlined above at paragraphs 11 to 22. Furthermore, Mr. Bodnar identifies the “new skills” that are required for the installation of ICF blocks. In that regard, Mr. Bodnar states that special training is necessary to install ICF blocks because there are “different techniques, different problems and different solutions” than those encountered during the installation of traditional concrete formwork. He does not specifically identify any of these different techniques, problems or solutions, although some of them are apparent from the inherent nature of the product worked with and are identified in the training manual. For example, the concept of a “blowout” (in which the pressure of the liquid concrete placed into the form creates a hole in the form) is not known in traditional concrete forming in which wood is used to form the walls in question. Mr. Bodnar notes in his declaration that he has prepared and provided training to members of the Carpenters’ with respect to all types of ICF products manufactured by different manufacturers, and that the Carpenters’ have invested considerable time, money and energy in training its members in ICF construction.

43. Finally, Mr. Bodnar identifies and discusses in his declaration what he refers to as a “new way to assign work”. Mr. Bodnar notes that traditional concrete forming requires different tasks to be generally performed by different trades or groups of workers, and in particular by Labourers, Carpenters and Iron Workers. He notes that in traditional concrete forming the work is arranged so that each trade is assigned its own specific tasks, and that there is little or no interchange. Mr. Bodnar states that ICF construction has developed “using a different approach to how work is assigned”. According to Mr. Bodnar, work assignment is characterized by two key features: first, a smaller crew of three or four members; and, second, a crew that can perform all tasks interchangeably. Mr. Bodnar provides his opinion regarding the economy and efficiency of the two different ways of assigning work. I will discuss that below under the heading “economy and efficiency”.

44. In my view, the evidence relied upon by the responding parties for the proposition that almost every aspect of ICF construction differs from traditional concrete formwork does not support that proposition. The biggest difference, of course, is the use of foam blocks rather than wood to create the form, foam blocks that are not stripped but instead become insulation for the walls that are formed. This is clearly the most obvious distinction, and it is undoubtedly a significant one. However, moving beyond that basic difference, the evidence does not establish any meaningful difference in approach used by the tradespersons at a construction site to the actual performance of the work in dispute. The concrete used with ICF blocks is no different in composition than the concrete used in traditional concrete forming. The reinforcing steel work performed with respect to the installation of ICF blocks is largely the same in both cases. The tools used for traditional concrete forming are identical to those used with ICF work, with the exception of a foam gun, foam adhesive and fibreglass reinforced tape – hardly such a revolutionary change in technology that traditional area practice ought to be considered irrelevant for the purposes of a work assignment dispute.

45. With respect to the skills required to perform ICF installation, I have no doubt that a certain amount of training is required to learn the finer points of ICF installation. Mr. Bodnar states in his declaration that during 2007 he used the training manual referred to above to prepare and teach a two-day training course for employees of Elite. Considered as a whole, the amount of training required to develop the skills to perform ICF installation and to deal with the different

problems arising from the use of ICF technology does not appear to be significant. One of the key differences in ICF block technology, the possibility of a bulge or a break in the formwork, is identified in the Carpenters' training manual as being "rare" and "easy to handle". Blowouts are also identified as problems that can be resolved relatively simply. Accordingly, the evidence of Mr. Bodnar does not establish that the skills and training required to make an individual adept at performing the work in dispute are so different than those required to make an individual adept at performing the work in dispute in traditional concrete forming that the Board ought to ignore or consider irrelevant the area practice evidence speaking to the work in dispute on projects in which traditional concrete forming is installed.

46. As noted above, the responding parties put considerable weight on the *Dineen Construction* decision. However, that decision is distinguishable on a number of significant bases. The Board rejected the position taken by Local 27 in that case because the function of the Roycet system was not to shape or to form concrete, but instead was to create a load-bearing "finished product that is a shiny, straight, plastic wall". That wall was created off-site, on the floor of a manufacturing facility. Even though the Roycet system requires concrete to be poured into its units for them to become a finished product, the units are not created in order to shape or to form a wall – in fact, the Board specifically concluded in its decision that "no formwork is required to achieve the final shape of the wall".

47. The instant case is considerably different. The critical function served by the ICF blocks is to shape or to form concrete. It also results in providing foam insulation that will be used by the builder to make the end product more energy efficient. However, the main function of the ICF technology is to form concrete on-site. The shape of the finished wall is not formed off-site at a manufacturing facility, but is shaped on-site by the actual placement of the ICF blocks. As the main function of the ICF construction on-site is to create forms that will hold concrete in place while it cures and hardens, area practice that speaks to traditional concrete forming in which forms are also created on-site to hold concrete in place while it cures and hardens is relevant and ought not to be rejected on the basis that ICF technology is being utilized.

48. Ultimately, then, I consider it appropriate to accept the area practice relied upon by the applicants as it speaks to the work in dispute. To the extent that that area practice relates to traditional concrete formwork, the evidence filed by the applicants is not disputed. It overwhelmingly favours the assignment of the work in dispute in all three Board Areas to the applicants. There was only one ICF technology project referred to in the materials that was located in either Board Area 9, 18 or 26 – a Bank of Montreal building that was built in Hamilton during the period from November, 2008 to May, 2009. That particular construction project commenced after the projects that are subject to these proceedings, and therefore the work assignment made at that project is of questionable weight in determining the propriety of the work assignments made in these proceedings. Even if I were to consider that project, the other evidence of area practice would clearly have determinative weight.

49. As a result, the relevant area practice evidence overwhelmingly supports the assignment of the work in dispute to the applicants.

Employer Practice

50. As is often the case in jurisdictional dispute proceedings, the question of the identity of the employer for the purposes of these proceedings is a live issue, and was addressed by the parties at the consultation. As noted above, PCL subcontracted the work in dispute to Elite, and Elite assigned the work in dispute to members of the Carpenters. Elite is a single-trade contractor, bound only to the Carpenters. PCL, on the other hand, has Provincial ICI collective agreements with the Labourers, Carpenters and Iron Workers.

51. The Carpenters assert that for the purpose of determining employer practice the employer is Elite and not PCL. The Carpenters note that subsections 99(1)(a) and (b) of the Act make specific reference to "an employer", and it relies upon the decisions of the Board in *Napev Construction Ltd.*, [1980] OLRB Rep. February 247 and *Ellis-Don Construction Ltd.*, 2005 CanLII 26978 in support of its position. The Carpenters acknowledge that the Board has rejected its proposed approach in certain recent cases, and note that there may be practical and policy reasons why the Board would prefer to consider the practice of a general contractor to be the practice of the employer for the purposes of adjudicating a work assignment dispute. However, the Carpenters state that the wording of the Act does not support that approach. In the alternative, the Carpenters state that even when the Board has considered the "upstream" collective agreement obligations and practice of the general contractor as evidence of employer practice, it has also taken into account and has given considerable weight to the collective agreement obligations of the subcontractor, which is the actual employer of the persons to whom the work in dispute was assigned.

52. PCL adopts the position taken by the Carpenters on this question. Elite did not take a position on this issue in its brief, and counsel for Elite did not address this question during his oral submissions.

53. The applicants take a contrary position. They assert that the employer for the purpose of addressing employer practice with respect to these work assignment disputes is PCL and not Elite. They note that the thrust of recent case law is to consider the work assignment patterns of the general contractor to determine if a work assignment made is appropriate. The applicants rely upon *Eastern Construction Company Limited*, 2003 CanLII 18761, *Priestly Demolition*, 2004 CanLII 49867, *Flynn Canada Ltd.*, 2005 CanLII 22599, *Dineen Construction*, cited above, and *R.M. Belanger Limited*, 2007 CanLII 32434. With respect to *Napev Construction Ltd.*, cited above, and other cases that have adopted the approach taken by the Board in that case (including *AGS Contract Glazing Limited*, [1998] OLRB Rep. July/August 533, a decision authored by a panel of the Board chaired by this Vice-Chair), counsel for the applicants asserted during argument that those decisions were wrong in their approach and ought not to be followed.

54. This question has been a live topic of debate in the construction labour relations community for some time. Some decisions of the Board have adopted a narrow interpretation of the term "employer" for the purpose of identifying employer practice. More recent decisions of the Board have concluded that a narrow interpretation of the term "employer" is inconsistent with the purposes of the Act. Those decisions have adopted a broader perspective on the factor of employer practice, focusing upon the practical significance of the decision made by a general contractor to subcontract work to an entity that is bound to one or more collective agreements

covering the work performed by one or more particular trades. This has led some panels of the Board to distinguish the earlier decisions, or to declare them to be wrongly decided.

55. In my view, the Board's recent jurisprudence has for all intents and purposes resolved this debate. Although it is not at all clear to me that decisions such as *Napev Construction Ltd.* or *AGS Contract Glazing Limited* were wrongly decided, what is clear is that the Board has in recent years consistently adopted a broader review of the contractual relationships in play when assessing the factor of employer practice. Recent decisions of the Board have identified the significance of considering the circumstances surrounding the initial subcontracting of the work in dispute in the course of determining whether the work assignment was correctly made. In *Eastern Construction Company Limited*, cited above, the Board made the following observations at paragraph 45:

45. ... To say that the act of subcontracting is a commercial act devoid of labour relations consequences is to ignore the realities of the construction industry, and the reality of where jurisdictional disputes come from. More significantly, it would mean that there is a subset of jurisdictional disputes (which are just as real as any other) that cannot be adequately addressed by the Act. Such an interpretation is an inappropriate interpretation of the Act, and flies in the face of the history of the Board's jurisprudence and the statutory history of the Act.

Subsequently, in *Priestly Demolition*, cited above, the Board made the following observations at paragraphs 8 and 9:

8. In *Eastern Construction Co.*, [2003] OLRB Rep. September/October 784, the Board determined that the choice made by a general contractor to subcontract the work was not a "commercial act devoid of labour relations consequences" (paragraph 45). To conclude otherwise would ignore the importance to the industry of subcontracting clauses that unions have negotiated with sources of the work, that is, general contractors. *The choices that general contractors make about how work is performed, whether directly, or by bundling certain aspects of the job together and subcontracting those bundles to various specialty subcontractors, all have labour relations consequences, depending on the collective agreement relationships and consequent subcontracting obligations of the general contractor, as well as the specialty contractor. A focus on only the employer who directly engages workers to perform work that the employer has somehow won the right to perform, ignores important labour relations values.*

9. Looking at only the "downstream" specialty subcontractor and its labour relations obligations would diminish the importance of the work security protections trade unions have negotiated with the "upstream" source of work. The Board's jurisdictional dispute process and remedies permit all of the trade unions, and both the "downstream" and "upstream" entities that have some control over how the work is made available to a particular trade, to come to the Board. *Once at the Board, we can look at the work assignment patterns of the real source of the work, the general contractor, to determine if the work assignment is appropriate, having regard to its practice, and the practice of others in the Board area. Whether that "assignment" was accomplished by directly hiring or by subcontracting the work to someone else is not particularly significant to the Board's determinations in section 99. In other words, it is not particularly significant to the Board's determination whether the general*

contractor was the employer of the persons who actually did the work. Consequently, in my view, it is not useful to determine, as a preliminary issue, who is the employer of the persons who actually did the work and I decline to do so. (emphasis added)

In both of these excerpts, the Board highlighted why it is important for the Board to consider the choices or decisions made by general contractors that subcontract the work in dispute when determining how that work ought to have been assigned.

56. Subsequently, in *R.M. Belanger Limited*, cited above, the Board was faced with the same argument that was made by the Carpenters in this proceeding; that is, that the Board has no jurisdiction to consider the practice of the general contractor under the heading of employer practice because of the use of the words “an employer” in subsections 99(1)(a) and (b) of the Act. In response to that argument, the Board made the following comments, with which I agree:

14. The Carpenters argued that the Board has no jurisdiction under section 99(1) to do so. It argued that the Act refers to “employer” in both paragraphs (a) and (b) of the section and that the Board in *Napev Construction Ltd.*, [1980] OLRB Rep. Feb. 247 found that an employer, for the purposes of section 99, could only be the contractor who employs the employees directly to perform the work. For the purposes of this case, I do not need to deal with that argument. *The issue here is not whether the Board may act at all, but whether in so doing, what weight it will give in the decision-making process to the practice of the general contractor. The term “employer practice” is a construct of the Board, not a term of the Act. The Board has a wide discretion to consider whatever factors are appropriate and to give them whatever weight the Board concludes is necessary.* Since the Carpenters concede that Belanger’s practice is something the Board would consider under the “area practice” factor, its argument is really a question of the weight to be given to the evidence, not an issue of jurisdiction or even of relevance. For the reasons given in *Eastern* and *Priestly*, I propose to give weight to the practice of both Furoy’s and Belanger in considering employer practice. (emphasis added)

57. Finally, in a recent decision, *George A. Kelson Ltd.*, 2009 CanLII 50200, the Board made the following observations at paragraphs 9 and 11:

9. The Board’s practice when dealing with a jurisdictional dispute other than on a project governed by the EPSCA rules and where the collective agreement obligations of the general contractor and the subcontractor are different is this: the Board will consider the practice of both general contractor and subcontractor. In *Buttcon*, above, the Board put greater weight on the practice of the general contractor. In other cases such as *Adam Clark Co. Ltd.* [1999] OLRB Rep. Jan./Feb. 1, the Board indicated it might place greater weight on the practice of the subcontractor. ...

11. The end result is that there is no hard and fast rule about which contractor’s practice is more significant. The Board will consider the practice of both a general contractor and a single-trade sub-contractor. In this case, as in *Priestly*, above, and in *Flynn Canada Ltd.*, [2005] OLRB Rep. May/June 410, the pattern of subcontracting was (or might have been) significant and informed the weight given to the practice of both contractors. ...

58. I accept and adopt the approach reflected in the above-referenced decisions. In my view, the entire answer to the statutory interpretation argument made by the Carpenters in this proceeding is that identified by the Board in *R.M. Belanger Limited*, cited above. The factors that are typically considered by the Board in a work assignment proceeding are not mandated by the Act but have, instead, been developed by the Board over time. Accordingly, irrespective of the identity of the "employer" for the purposes of section 99 of the Act, the Board can consider as a factor in the determination of a work assignment dispute the practice of a general contractor that subcontracts the work in dispute to a single-trade subcontractor, notwithstanding that the general contractor is not the employer of the individuals who ultimately perform the work. In the vast majority of recent work assignment decisions in which single-trade specialty subcontractors performed the work in dispute, the Board has found it important to consider as a factor the broader contractual relationships in effect when determining whether a work assignment was properly made. Accordingly, in a work assignment proceeding in which the work in dispute has been subcontracted by a general contractor to a subcontractor that has assigned the work in a particular manner, and where the collective agreement obligations of the general contractor and subcontractor are different, the work assignment practices of both the general contractor and the subcontractor will be factors considered by the Board in determining the dispute in question.

59. With that in mind, I turn to the practice of the subcontractor, Elite and the practice of PCL, the general contractor. Turning first to the practice of Elite, the evidence establishes that Elite has consistently assigned the work in dispute to members of the Carpenters. This is not surprising. None of the applicants have bargaining rights with Elite, and it was not asserted that Elite had ever performed the work in dispute for another general contractor against which any of the applicants could have attempted to claim the right to perform the work.

60. The practice of PCL as a general contractor in the ICI sector of the construction industry throughout the Province is of considerable importance in this proceeding. First, with respect to the assignment of the work in dispute on sites in which traditional concrete formwork has been performed, the evidence establishes that PCL has consistently adopted the same assignment of work throughout the Province as have other general contractors in the Board Areas in question. Quite simply, the work in dispute has been assigned to members of the applicants. The applicants identified approximately 100 ICI construction projects (in Board Areas No. 3, 5, 6, 7, 8, 9, 15, 16, 17, 18, 26 and 29) in which PCL acted as general contractor, and in which the work in dispute claimed by the applicants was performed by members of the applicants.

61. The parties also addressed the province-wide performance of ICF work by PCL in the ICI sector of the construction industry. With the exception of the three bank branches that are the subject of these four proceedings (which I will address below), since 2006 PCL has acted as a general contractor with respect to the construction of a number of Bank of Montreal facilities that used ICF technology.

62. The first of these facilities was built in Milton, Ontario in September, 2006. In that instance, PCL subcontracted all of the work on the building to Belmont. Belmont, like Elite, is a single-trade contractor. However, Belmont is bound to the Labourers' Provincial ICI collective agreement. Accordingly, it assigned the performance of the work in dispute to members of Local 506. A second Bank of Montreal branch was built in London, Ontario, in January, 2007. Similar to the construction of the branch in Milton, PCL subcontracted all of the work on the building to Belmont, and Belmont assigned all of that work to members of Local 506. None of the work on

either of these two projects was performed by members of the Carpenters or by members of the Iron Workers.

63. The performance of the work in dispute on the third Bank of Montreal branch, located in Ajax, Ontario, unfolded differently than its performance on the first two facilities. This work was performed during the spring of 2007. The actual time frame during which the work in dispute was performed was not identified in the materials filed with the Board. Again, PCL subcontracted all of the work on site to Belmont. The Township of Ajax required that a specific system of ICF blocks be utilized in the construction of the branch. Belmont was not a certified installer of that system, and the system owner would not sell its product to Belmont. As a result, Belmont was required to subcontract the work of installing the ICF blocks to a company certified to install the system in question. As it developed, that subcontractor was Elite. Elite assigned the work in dispute to members of the Carpenters. Local 506 grieved Belmont's subcontract to Elite (twice, as it turned out, because after the first grievance was settled, Belmont continued to subcontract the work in dispute to Elite). Belmont entered into resolutions of both grievances with Local 506, acknowledging violations of the Labourers Provincial ICI collective agreement and paying damages to Local 506 totalling \$12,000.

64. Subsequent to the construction of the Ajax branch, additional branches were constructed for the Bank of Montreal through tenders issued by PCL as the general contractor. One was located in Oakville, Ontario. On that project, PCL subcontracted the performance of the ICF work to Reimar Construction Corporation ("Reimar"). A subcontract for the performance of ICF work for another Bank of Montreal branch, this one located in Hamilton, Ontario, was subsequently awarded by PCL to Reimar. Reimar is bound to both the Labourers' and Carpenters Provincial ICI collective agreements. On both of these projects, Reimar assigned the work in dispute in this proceeding (including the reinforcing rod work) to members of Local 837. Members of the Carpenters were assigned their traditional portion of concrete forming work. I note here that the project in Hamilton, Ontario occurred after the grievances leading to these four proceedings were lodged. Little weight ought to be placed on that evidence as a result, though the practice of Reimar in its assignment of the work in dispute on that project was consistent with its assignment of the work on the Oakville project.

65. There was also reference made in the materials filed with the Board to the construction of a branch of the Bank of Montreal in Aurora, Ontario. The time frame during which the ICF work was performed at that branch is unclear. However, it appears from the materials that the work performed at that branch occurred after the grievances leading to filing of these four proceedings were lodged. According to the declaration provided by the Vice-President of Sales for Belmont, PCL awarded the concrete forming contract to Elite, which subcontracted all of the work, except for the installation of the ICF blocks, to Belmont. Accordingly, much of the work in dispute was performed on that project by members of the Carpenters.

66. Finally, there was reference made in the materials filed with the Board to a contract that was let for the installation of ICF blocks with respect to the construction of a retirement residence in Welland, Ontario from September, 2006 to December, 2007. PCL is said to have subcontracted the performance of ICF work on this project to Amico Design Build Inc. That company is bound to the Labourers' Provincial ICI collective agreement and performed all aspects of the ICF installation work on that project, including the work in dispute, with members of the Labourers.

67. During the course of the consultation counsel for the Carpenters asserted that the Board ought to take into account as relevant evidence of PCL's practice the three projects in dispute. Counsel for the applicants submitted in response that because the assignment of work on the three projects in dispute is by definition "in dispute", those assignments ought not to be taken into account by the Board in determining the practice of PCL. I agree with the applicants on this point. Although the subcontracting of the work in dispute to Elite on the three projects at issue here may reflect a preference on the part of PCL to subcontract to a company bound to the Carpenters, the subcontracts resulted in work assignments that are disputed. To put any weight on the projects subject to these complaints would allow PCL and the Carpenters to "bootstrap" the evidence required to establish their position. Furthermore, given that the All Sector Agreement and its highly favourable wage rates almost certainly affected the decision made by PCL to subcontract these three projects to Elite, even if I were inclined to consider the three instant projects as relevant I would be hesitant to give them much, if any, weight.

68. The clear practice of Elite is to assign the work in dispute to members of the Carpenters. This is hardly surprising, given that it is not bound to a collective agreement with the Labourers or the Iron Workers. The practice of PCL is mixed. The assignment of the work in dispute on traditional concrete formwork project is made to members of the Labourers and the Iron Workers, or it is subcontracted to companies that assign the work in dispute to members of the Labourers or the Iron Workers, as the case may be. With respect to the practice of PCL as it relates to concrete forming with ICF blocks, its practice is mixed. On some occasions it has subcontracted to Labourers-only subcontractors. On other occasions it has subcontracted the work in dispute to Carpenters-only subcontractors. On two occasions it has subcontracted the work in dispute to Reimer, a company that is bound to both the Carpenters and the Labourers. In that instance, the work in dispute was assigned by Reimer in the same manner as traditional concrete formwork, with the exception of the reinforcing steel work, which was assigned to Labourers.

69. Most recently, PCL has subcontracted the work in dispute to Elite. Elite has used members of the Carpenters to perform the work in dispute. However, because of the effect of the favourable wage rates contained in the All Sector Agreement, I put little weight on this evidence. It is hardly persuasive for the Carpenters and Elite to enter into an unlawful, favourable collective agreement, for Elite to successfully bid for the work in dispute from PCL as a result, and then for both to point to the performance of the work in dispute as evidence that PCL has an established practice of assigning the work in dispute to members of the Carpenters.

70. PCL has never subcontracted the reinforcing steel work on an ICF project to a company with contractual ties to the Iron Workers union. That work has always been performed by members of the Labourers or by members of the Carpenters.

71. Looked at in its totality, the evidence of employer practice suggests that the applicants have a better claim to the assignment of the work in dispute than do the Carpenters. The Iron Workers have that better claim through the large number of traditional concrete forming projects upon which its members performed that work. The Labourers have that better claim through both the evidence relating to traditional concrete forming work and the mixed practice of PCL with respect to the assignment of the work in dispute on ICF formwork projects. Notably, when the work in dispute was subcontracted by PCL to a subcontractor bound to both the Carpenters and the Labourers, the work in dispute claimed by the Labourers was assigned to members of the Labourers.

72. This factor supports the assignment of the work in dispute to members of the applicants.

Collective Agreements

73. Having regard to the fact that the practices of both Elite and PCL are relevant for the purpose of these proceedings, the collective agreement relationships of both Elite and PCL are relevant considerations.

74. The work in dispute was work in the ICI sector of the construction industry. Through the All Sector Agreement Elite is bound to the Carpenters Provincial ICI Agreement. However, the terms of that collective agreement were not applied to the work in dispute. PCL is bound to the Labourers Provincial ICI Agreement, the Carpenters Provincial ICI Agreement, and the Rodmen Provincial ICI Agreement. The work in dispute is clearly claimed by the applicants as work within their jurisdiction in the Labourers Provincial ICI Agreement and the Rodmen Provincial ICI Agreement.

75. The Carpenters Provincial ICI Agreement does make specific reference to ICF work. Its Schedule "A" claims "[t]he layout, levelling, assembly, bracing and aligning of all insulated concrete forms and any and all associated hardware and/or accessories. The laying out and installing of all inserts, bulkheads, bucks and blockouts in insulated concrete forms". The claim made in the Carpenters Provincial ICI Agreement does not encompass the installation of reinforcing steel, and does not specifically claim the right to perform many of the work tasks in dispute that are claimed by the Labourers in these proceedings.

76. The fact that the applicants have not negotiated a specific reference to the work in dispute in relation to the installation of ICF blocks does not weaken their claim to the work in dispute. The work in dispute is claimed by the applicants in their Provincial ICI collective agreements with respect to the installation of concrete forms, which includes ICF technology.

77. In my view, this factor favours assignment of the work in dispute to members of the applicants.

Economy and Efficiency

78. Economy and efficiency is a significant factor in dispute in these proceedings, and was addressed by counsel at some length during the course of argument.

79. As noted above, Mr. Bodnar, the Carpenters' Provincial Training Co-ordinator for Ontario, identifies and discusses in his declaration what he refers to as a "new way to assign work". He states that in contrast to the performance of traditional concrete forming, in which different tasks are generally performed by different trades or groups of workers (in particular by Labourers, Carpenters and Iron Workers), ICF construction has developed "a different approach to how work is assigned". Mr. Bodnar states that the assignment of work is characterized by two key features - first, a smaller crew of three or four members, and second, a crew that can perform all of the work tasks interchangeably. Mr. Bodnar states in his declaration that to segregate tasks as has historically been done when performing traditional concrete formwork would be extremely uneconomical and inefficient because crews would have to be larger. Furthermore, given the way

that ICF blocks are installed, there would often be times "when crew members would be standing around with nothing to do". In his experience, companies installing ICF blocks all utilize an interchangeable crew. Based upon the declaration authored by Mr. Bodnar, the Carpenters assert that it is much more economical and efficient to have the work in dispute performed by its members.

80. PCL, in its written submissions and through counsel at the consultation, reiterated many of the points made by the Carpenters. PCL states that its preference is to subcontract the ICF work to a single-trade contractor that has the required skill to perform the work, irrespective of whether the Labourers or Carpenters hold bargaining rights for that contractor.

81. Furthermore, PCL states that it would not be economical or efficient for it to be required to subcontract some but not all of the work in dispute. Its practice is to subcontract out all of the ICF work in one piece, rather than to split the subcontract into two portions, a practice which it states would not be cost effective. If the Board were to determine that the ICF work were similar to traditional concrete formwork, PCL asserts that it would be forced to split portions of the ICF system, and that the requirement to do so "would significantly hamper [its] ability to subcontract the work". Pursuing this argument further, PCL asserts that if the claim of the applicants is successful it may be forced to directly employ Labourers, Carpenters and/or Iron Workers to perform the work in dispute, or to abandon the use of ICF blocks in its entirety. It also reiterates the assertion made by Mr. Bodnar that, due to the nature of ICF installation, "there would likely be employees standing around waiting for each piece of work to be completed and working intermittently", which is clearly inefficient.

82. Elite reiterated some of these same points. It notes that its typical crew of ICF installers is made up of three or four employees, and that each member of the crew performs the various tasks required interchangeably. It states that its crews are small, efficient, work co-operatively and are kept busy. It asserts that this method of assigning the work required to install ICF blocks "is the only way that makes sense".

83. Counsel for the applicants disagreed with the positions taken by the responding parties. The applicants note that no responding party submitted any evidence to establish that subcontracting ICF work under one subcontract cannot be performed in accordance with PCL's collective agreement obligations. The applicants point to the ICF work performed by Reimar at the two Bank of Montreal branches that it successfully subcontracted with PCL to perform. Reimar subcontracted the work in dispute to members of the Labourers, and members of the Carpenters performed the traditional carpentry portion of the formwork. Counsel also noted during argument that nothing precludes PCL from hiring any of the three trades directly should it choose to do so.

84. The applicants assert that no responding party has established through evidence that if the work in dispute were assigned in accordance with its usual assignment on traditional concrete formwork projects members of the crew would be "standing around with nothing to do". The applicants assert that if a party to a jurisdictional dispute makes such an assertion, it is incumbent upon that party to provide clear and cogent reasons in support of its theory. Again, the applicants point to the fact that Reimar was able to perform the installation of ICF blocks using both Labourers and Carpenters. There is no evidence before the Board that suggests that its tradespersons were "standing around doing nothing" from time-to-time. Finally, the applicants

assert that the Board has previously noted that this factor is not a significant or dominant factor, and cannot be permitted to apply in priority to other more significant factors (see *Kel-Gor Limited*, cited above, and *Babcock & Wilcox Canada*, 2007 CanLII 17508).

85. I am in agreement with the applicants that it is not enough for a party to a jurisdictional dispute to merely assert, without any credible underlying factual support, that the consequence of assigning the work in dispute to the party or parties seeking the assignment will be to have tradespersons “standing around doing nothing” on site. This is an assertion that is made on a regular basis in jurisdictional dispute proceedings as part of an economy and efficiency argument. There can be no dispute that workers being paid to stand around on a construction site with nothing to do for any length of time is a significant inefficiency. If the assignment of work in one way would undoubtedly lead to such a result, the Board would consider that to be a significant factor in favour of not assigning the work in dispute in that manner.

86. An assertion in a jurisdictional dispute that an assignment of work in one manner will result in workers standing around with nothing to do is often not supported by any explanation by the party making the assertion just how it is that this consequence will necessarily result from the proposed assignment of work. These proceedings are such an example. Mr. Bodnar does not explain in his declaration how it is that members of the applicants or of the Carpenters will end up standing around doing nothing if the work in dispute were to be assigned to the applicants. Mr. Mogaddam, the individual declarant on behalf of Elite, makes the same assertion in his declaration. He too does not set out the basis for his assertion. There appears to be considerable reinforcing steel work throughout the installation of the ICF blocks to keep a member of the Ironworkers trade constantly busy. Similarly, there appears to be considerable Labourers work available to keep a member of the Labourers trade constantly busy. It is not intuitively evident from the nature of the work performed on an ICF project when it would be during the course of installing ICF blocks that an Ironworker, Labourer or Carpenter would have nothing to do. In the absence of some factual support as to how the use of one or more Ironworkers or Labourers will leave the workers on the site meaningfully idle from time-to-time, I put no weight on that assertion.

87. I am also in agreement with the observation made in the *Kel-Gor Limited* decision, cited above, that the economy and efficiency factor cannot be permitted to trump other factors, where the effect of doing so is to make bargaining rights meaningless. It may well be that with the advent of a new technology such as ICF blocks it is possible to put together a crew of workers consisting of one trade that can perform all of the work typically performed in the past by members of more than one trade. The construction trades are making broader claims to jurisdiction and are training their members in aspects of construction work that historically have been performed by members of other trades. The fact that members of a certain trade have been trained to perform tasks historically performed by members of another trade ought not to permit an employer or a general contractor, under the guise of a claim to more economic and efficient production, to ignore long-established work jurisdictions that have been accepted by the construction trades on projects in the ICI sector of the construction industry. As pointed out by the Board in *Pigott Construction Limited*, [1992] OLRB Rep. June 748, at paragraph 7:

Economy and efficiency are and always have been considerations for this Board which in particular situations may become dominant, but for this Board to signal a sudden shift to considerations of pure economy, and a wholesale scrapping of

old established rules, does not appear to us to be in the interests of anyone (except perhaps those trade unions sitting at the lower end of the rate scale).

In light of the unlawful terms of the All Sector Agreement, the Board's reference in the above passage to trade unions "sitting at the lower end of the rate scale" as having a greater interest in adopting a pure "economy and efficiency" argument has a certain resonance in this proceeding.

88. On the basis of the materials before the Board, much of the economy and efficiency argument made by the responding parties enjoys little factual support. As noted above, PCL subcontracted the work on two of the Bank of Montreal projects to Reimar, a company that is bound to both the Labourers and Carpenters Provincial ICI Agreements. Why it is meaningfully more expensive or inefficient to do so (in the absence of an agreement such as the All Sector Agreement) is not explained by PCL in its materials. It is almost certain that performing the work in dispute through more than one trade is not as cost effective as performing it with only one trade, but that does not mean that to do so is uneconomical or inefficient.

89. Finally, to the extent that the favourable collective agreement terms contained in the All Sector Agreement make Elite a more economical and efficient subcontractor, I have outlined above why the economy and efficiency factor ought to be discounted considerably. I will not repeat that analysis.

90. Taking the evidence offered by the responding parties at its very highest, this factor is neutral as amongst the parties.

Safety, Skills and Training

91. In my view, this factor is neutral. The evidence before the Board establishes that members of both the Labourers and the Carpenters have performed the work in dispute safely. Members of the Carpenters have the skills to perform the work in dispute and can perform it safely, as can members of the Labourers. With respect to the reinforcing steel, the Iron Workers can obviously safely and skilfully perform the reinforcing steel work in dispute relating to the installation of ICF forms.

Collective Agreements Revisited

92. For the reasons set out above, the relevant factors clearly lie in favour of the work in dispute being assigned to members of the applicants. The employer practice is strongly in favour of assigning the work to members of the applicants. The area practice also lies strongly in favour of assigning the work in dispute to members of the applicants. The factors of economy and efficiency, and skill and ability, are at best for the responding parties neutral and do not lead the Board towards the conclusion that the work in dispute was properly assigned.

93. Elite is not bound to either the Labourers Provincial ICI collective agreement or the Iron Workers Provincial ICI collective agreement. Should that fact preclude the granting of relief to the applicants?

94. The Carpenters rely upon the fact that the applicants do not have a collective agreement with Elite in support of its position that the work was properly assigned. It asserts that

the Board's jurisprudence establishes that a trade union without a collective agreement will have a difficult time succeeding with a jurisdictional complaint against a trade union that has a collective agreement with the employer. In support of that assertion the Carpenters rely upon *Groff & Associates*, [1994] OLRB Rep. July 846 and *Bondfield Construction Company (1983) Limited*, [2002] OLRB Rep. March/April 114.

95. The case law relied upon by the Carpenters describes the task facing a trade union without a collective agreement in the applicants' circumstances somewhat more positively than asserted by the Carpenters. In *Groff & Associates*, cited above, the Board put it this way at paragraph 12:

Because of the historical development of the division of work in the construction industry on a craft or trade basis, and the ever increasing overlap between the construction trades and the work jurisdictions which they assert, the Board has recognized that collective agreement relationships cannot, by themselves, be determinative of a jurisdictional dispute complaint. *Consequently, while a trade union which has no applicable collective agreement with the employer which assigns the work in dispute is likely to have a difficult time in having the assignment altered, a trade union which has a collective agreement with the assigning employer will not necessarily be successful in fending off a claim for work by a trade union which has no collective agreement with that employer.* (emphasis added)

Cited in support of this principle is *Brunswick Drywall Limited*, [1982] OLRB Rep. August 1143 and *Pigott Construction Limited*, [1992] OLRB Rep. June 748. Other cases that describe the task facing a trade union without a collective agreement in largely the same manner include *Kel-Gor Ltd.*, cited above, and *Elecon Electrical Contractors Inc.*, [1995] OLRB Rep. May 645.

96. In *Kenaidan Contracting Ltd.*, 2005 CanLII 42929 (ON L.R.B.), the Board at paragraph 11 described the situations in which the Board gave effect to traditional craft claims in the absence of a collective agreement as being "rare". In those circumstances the Board has stated previously that the party complaining about the assignment of work will have to satisfy the Board that there are compelling reasons or significant labour relations reasons to interfere with the employer's assignment (see, for example, *Groff & Associates*, cited above, at paragraph 20, and *Bondfield Construction Company*, cited above, at paragraph 17).

97. In these proceedings, PCL indicated in its materials, and counsel reiterated during the course of argument, that PCL does not want to be placed into the position where it finds itself required to employ certain trades directly. It prefers to subcontract out all of this work. Nor does PCL desire to be forced to break up what it considers to be a single work package into two or more parts. Accordingly, it prefers to subcontract all of the ICF work out in one package to one single-trade subcontractor. Elite, for its part, presumably wants to continue to perform all of the work in dispute. If the Board were to conclude that the work in dispute ought to have been assigned to members of the applicants, to continue to perform the work in dispute Elite would be required to either become bound to the Labourers and the Iron Workers Provincial ICI collective agreements, or to subcontract itself the work in dispute to one or more entities bound to the Provincial ICI collective agreements. The Board is not in the business of telling general contractors such as PCL, or subcontractors such as Elite, how they ought to be structuring the performance of their work. Accordingly, there have to be compelling or significant labour

relations reasons for the Board to conclude that the work in dispute ought to have been assigned to members of a particular trade in the absence of a collective agreement relationship.

98. In the circumstances of these proceedings, I am satisfied that the required compelling or significant labour relations reasons exist. There can be no dispute that the work in dispute has traditionally been assigned to members of the applicants in the ICI sector of the construction industry. The location of jurisdictional lines as amongst Carpenters, Labourers and Iron Workers with respect to the performance of traditional concrete forming has been largely settled after decades of litigation. In the absence of a legitimate reason to alter those lines (as a result of a significant change in technology, for example), there is simply no basis for assigning all of the work tasks involved in forming concrete to members of one trade – whether that trade be the Carpenters, the Labourers, or the Iron Workers.

99. Here, the Carpenters and PCL argued that a significant change in technology justified the assignment of work to members of the Carpenters. For the reasons set out above, I conclude that the performance of formwork in the ICI sector of the construction industry with ICF technology is not meaningfully different than the performance of that same work in the traditional sense. The argument that the assignment is justifiable on the grounds of economy and efficiency is also not persuasive. Regrettably, the decision made by the Carpenters and Elite to enter into the All-Sector Agreement, and the bidding advantage that the All-Sector Agreement provided Elite, made it more likely that PCL would subcontract the work to a single-trade contractor. The economy and efficiency reflected by Elite's bidding and performance of the contracts was grounded in an unlawful collective agreement. There is just no objective reason offered for the conclusion that a general contractor such as PCL ought to be in the position to subcontract all forming work on an ICI sector project using ICF technology to a single-trade contractor. In these circumstances, I am satisfied that there are compelling reasons to find in favour of the applicants notwithstanding the absence of a collective agreement relationship between each of them and Elite.

100. In reaching this conclusion, I have kept in mind the position of PCL that it does not want to be put into the position that it is forced to perform some or all of the formwork on these projects with its own forces, or that it ought not to be compelled to subcontract the forming work in question in more than one package. These are both legitimate business goals for PCL to desire to achieve. However, the preference on the part of PCL can only take it so far. PCL is bound to Provincial collective agreements with all three of trades in question. If it takes on a project as a general contractor it is obliged to honour its collective agreement obligations with those three trades. It cannot merely ignore those obligations because there is a more economically favourable way to allocate work tasks.

Conclusion

101. For the reasons set out above, I conclude that the applicants have established on the balance of probabilities that the work in dispute identified above in paragraph six ought to have been assigned to its members rather than to members of the Carpenters.

2442-07-R; 2936-07-R Labourers' International Union of North America, Ontario Provincial District Council, Applicant v. **SNC-Lavalin Inc.**, Responding Party; Labourers' International Union of North America, Ontario Provincial District Council, Applicant v. SNC-Lavalin Inc., SNC-Lavalin Group Inc. and SNC-Lavalin Power Ontario Inc., Responding Parties

Certification – Related Employer – The Labourers sought certification for two employees engaged to carry out the “pump watch” at the Ear Falls Project during a specified short period of time – The application for certification and the relief sought under s. 1(4) of the *LRA* were dependent on a finding that one or more of SNC Lavalin Inc., SNC-Lavalin Group Inc. and SNC-Lavalin Power Ontario Inc. (collectively “SNC”) was the employer of the two labourers – The Board found that when the original subcontracting arrangements made by SNC collapsed, efforts were made to ensure that there was continuity for the pump watch responsibilities – SNC was sensitive, however, to the employer issue long before the arrangements for the pump watchers were made; it took steps to ensure that it was not, and was not seen to be, the employer of the labourers – The Board held that there was no doubt that the work performed was for the benefit of SNC and that SNC was ultimately responsible for the labourers being paid through its contract with a subcontractor – However, fundamental control over the labourers at the relevant time was exercised by a contracted project manager, and not SNC – Applications dismissed

BEFORE: *Harry Freedman*, Vice-Chair.

APPEARANCES: *L. Richmond, D. McIntosh, H. Bartlett and J. Stirrup* for the applicant; *Jeff Mitchell, Lisa De Piante and Peter Drake* for SNC Lavalin Inc.

DECISION OF THE BOARD: September 22, 2010

1. The applicant seeks certification pursuant to the construction industry provisions of the *Labour Relations Act, 1995*, S. O. 1995, c. 1 as am. (“the Act”) in Board File No. 2442-07-R and requests declaratory and other relief under sections 69 and 1(4) of the Act in Board File No. 2936-07-R. These two applications arise from a construction project at the Ear Falls Generating Station (the “Ear Falls Project”) when two construction labourers were engaged to carry out the “pump watch” at the Ear Falls Project for several days between October 31, 2007 and November 10, 2007. This application for certification was filed on Thursday November 1, 2007.

2. The issue in the certification application in Board File No. 2442-07-R is the identity of the employer of the two construction labourers the applicant seeks to represent. The application for declaratory and other relief in Board File No. 2936-07-R is dependent on the Board finding one or more of SNC Lavalin Inc., SNC-Lavalin Group Inc. and SNC-Lavalin Power Ontario Inc. (collectively “SNC”) was the employer of those two construction labourers. I note that SNC took the position SNC-Lavalin Power Ontario Inc. (“SLPO”) was the SNC entity responsible for the Ear Falls Project.

3. SNC entered into a design build contract with Ontario Power Generation Inc. under which SNC was to design and construct a new hydro electric generating station near the town of Ear Falls. SLPO subcontracted all the civil work associated with the Ear Falls Project and engaged various subcontractors to carry out the construction.

4. SNC-Lavalin Inc. as the responding party in the certification application contends neither it nor SNC-Lavalin Group Inc. nor SLPO employed construction labourers at the Ear Falls Project. The identity of their employer became an issue because SNC contends it subcontracted all civil work associated with that construction project and did not employ construction labourers.

5. The Ear Falls Project had been underway for little over a year when SNC engaged Construction Louisbourg Ltée ("Louisbourg") on a cost plus time and materials construction contract to finish the remaining civil construction work at the Ear Falls Project after the first civil contractor at that site had abandoned the job. SNC asserts that Louisbourg was asked to leave the Ear Falls Project as of October 30, 2007. According to SNC, Louisbourg had engaged Vector Construction Ltd. ("Vector") as a subcontractor some time in May 2007. SNC claims when Louisbourg left the Ear Falls Project the two construction labourers who are the subject of this application (David Doucette and Lucien Desrochers) became employees of Vector as of October 31st.

6. Those two construction labourers were performing "pump watch" duties at the Ear Falls Project for several consecutive days beginning late in the day on October 30th and continuing on October 31st and the following week. The Ear Falls Project involved the construction, among other things, of a large water intake tunnel and power house. The power house and tunnel were excavated in bedrock, some 60 feet below ground level. It was vitally important to ensure the water pumps that were constantly pumping out water seeping into the excavation were monitored and maintained. There was no doubt that if those pumps failed, the area would be flooded and significant costs and delays would have ensued. The "pump watch" was a critical job that had to be carried out around the clock.

7. The issue before me is whether one of the companies encompassed by the term SNC as used in this decision was the employer of the two construction labourers working at the Ear Falls Project on November 1, 2007. The determination of that issue may dispose of both applications. That is, if the Board determines that one or more of the companies encompassed by the term "SNC" was not the employer of the two construction labourers, these two applications would be dismissed. If, however, the Board decides at least one of those SNC companies was the employer, then the parties would proceed to deal with the application under section 1(4) of the Act in Board File No. 2936-07-R in order to determine which one of SNC-Lavalin Inc., SNC-Lavalin Group Inc. or SLPO is the employer or whether one or more of them should be declared to be a single employer for purposes of the Act.

8. Damian Kulasingham, Vice-President Special Projects at one of the SNC companies explained the business model SNC developed for undertaking this type of a large construction project. He referred to it as the "EPC business model" by which SNC enters into an engineering, procurement and construction contract for major projects, similar to the "design/build model" adopted by other firms. Under that EPC business model, SNC does the engineering and procurement of the major machinery and equipment for a generating station and the project management for the construction work. He explained the construction work for a project is broken down into many smaller "packages" of work. Those smaller components of the overall construction project or packages of construction work are then subcontracted to construction subcontractors that are awarded the contracts for each component or package of work on a time and materials basis. He said the subcontractor takes the risk of ensuring the work is executed

competently in accordance with the contract specifications while SNC takes the risk of correctly assessing the amount of time needed to carry out the work.

9. Under that EPC business model adopted by SNC, SNC does not directly hire or employ any construction trades people. All construction trades people are employed by the subcontractors engaged by SNC. Mr. Kulasingham explained that SNC was not a signatory to any construction collective agreements although when it carries out construction projects in a unionized environment it will engage only unionized subcontractors.

10. Mr. Kulasingham testified that SNC was becoming concerned about Louisbourg's management and productivity. Both he and others from SNC met with Louisbourg to attempt to address the issues SNC had identified. Ultimately, when no resolution was possible, SNC advised Louisbourg its contract was to be terminated. Mr. Kulasingham said SNC gave Louisbourg verbal notice of termination at a face to face meeting in Montreal shortly before the end of October with the result that Louisbourg would be off the Ear Falls Project by October 31st at the latest.

11. Mr. Kulasingham had engaged David Witty through his one man construction consulting business (1041536 Alberta Ltd.) to take over as the construction manager at the Ear Falls Project at the end of September, 2007. Mr. Witty had done work for SNC at various projects over the previous five years. Mr. Witty's consulting company was retained by SNC to provide project management services at the Ear Falls Project. Mr. Witty was the only employee of 1041536 Alberta Ltd.

12. Mr. Witty explained that Mr. Kulasingham had contacted him because of problems that were occurring at the Ear Falls Project. He arrived at the Ear Falls Project on October 3rd with the mandate to try and solve the problems that had developed at that project. He explained the production at the site was not on schedule creating financial concerns. He believed the subcontractors at the site were not working to their full capacity. When he arrived he said there were 105 employees at the site doing the work that was subsequently done by 40 people. He also testified he had issues with the Louisbourg project management group who were, in his opinion, employing too many people to do too little work. He also identified some concerns about their billing and questioned a number of charges they were making. Mr. Witty brought in more SNC staff to monitor and review the invoices and time records submitted to SNC by Louisbourg. In his view, Louisbourg's performance continued to deteriorate during the month.

13. When it became apparent to SNC that Louisbourg would be leaving the Ear Falls Project SNC began contacting the subcontractors that had been engaged by Louisbourg. It was SNC's intention to advise those subcontractors that SNC would be assuming the subcontracts they had had with Louisbourg.

14. Both Mr. Kulasingham and Mr. Witty explained they had had numerous conversations in the days leading up to Louisbourg leaving the Ear Falls Project relating to what would have to be done should SNC decide to end its contract with Louisbourg. Mr. Witty was told by Mr. Kulasingham on October 29th that no agreement had been reached with Louisbourg and it would begin to leave the Ear Falls Project. Mr. Witty convened a meeting with the SNC personnel to advise them of that development and took steps to ensure that all SNC equipment was secured as Louisbourg began its demobilization. By the end of the day on October 30th, Louisbourg was off the site.

15. During the course of Louisbourg's departure from the Ear Falls Project Mr. Witty and Mr. Kulasingham discussed how to ensure the essential site service work, including maintaining the water pumps, would be carried out. Barry Fedorchuk, the applicant's steward at the Ear Falls Project met with Mr. Witty to find out what was going on. Mr. Witty advised Mr. Fedorchuk that Louisbourg was leaving the site and that it was vital that the essential services, such as electricity for the lights and heat in the power house and the pumps be maintained. The monitoring of the pumps was an element of Louisbourg's scope of work.

16. Louisbourg had used construction labourers to monitor the pumps. The pumps had to be checked every couple of hours to ensure they were operating. The outfalls from the pumps also had to be monitored from time to time to ensure water was being pumped out. The labourers were able to do the monitoring while doing other work, such as clean up and tending to the carpenters. Since the labourers often worked in the vicinity of the pumps they could hear the pumps operating and would also know if the pumps stopped working.

17. Mr. Witty indicated to Mr. Fedorchuk that if a couple of labourers wanted to stay on the job to do that work that would be fine, but if not, he himself would do the pump monitoring. Mr. Fedorchuk made it clear to Mr. Witty that if someone other than members of the applicant did that work there would be a grievance filed. Mr. Fedorchuk told Mr. Witty he would contact the local union to find out what might be done. Mr. Witty was subsequently contacted by Gino Russo, a business agent of the applicant. Mr. Russo advised Mr. Witty that SNC could hire labourers to do the work. Mr. Witty thanked Mr. Russo for his offer and contacted Mr. Kulasingham.

18. Both Mr. Kulasingham and Mr. Witty testified about their conversation concerning whether SNC would hire labourers through the applicant's hiring hall. Mr. Witty said he spoke with Mr. Kulasingham after the conversation with Mr. Russo. According to Mr. Witty, Mr. Kulasingham told Mr. Witty that there was no way he was to hire people through the union. Mr. Kulasingham told Mr. Witty that SNC does not carry on business that way, that hiring employees directly is simply not part of the company's profile. Mr. Kulasingham testified that he explicitly told Mr. Witty that under no circumstances was he to hire labourers. He said he told Mr. Witty that SNC was not a signatory to any collective agreement and that the direct hiring of the trades is not in the SNC business model. In cross-examination, Mr. Kulasingham indicated that he had two concerns about the direct hire of labourers; becoming signatory to a collective agreement and that direct hiring was contrary to the SNC business model. Mr. Kulasingham indicated that he could not specifically recall whether he had told Mr. Witty that hiring directly was inconsistent with the SNC business model.

19. Mr. Kulasingham said that Mr. Witty had told him that some site service work, which he did not explicitly describe, had to be carried out, and that if he did it himself or had other SNC people do that work the union would grieve. Mr. Kulasingham made it clear to Mr. Witty that he was not to hire labourers and that if he or his staff did that work and the union filed a grievance, SNC would deal with the grievance. Mr. Witty in his testimony confirmed he had received those instructions from Mr. Kulasingham. He understood that he was not to hire labourers and if necessary would do the work himself and deal with any grievance that might arise.

20. Mr. Kulasingham explained he knew labourers had to be employed to do the work, and in anticipation of Louisbourg's imminent departure, was discussing having other subcontractors

take over the site service work, which included the pump watch. He said that he had been having discussions with other subcontractors including Aecon Construction Inc. ("Aecon") and Vector about doing that work. He immediately made arrangements with Vector to take over responsibility for the site services work after speaking with Mr. Witty on October 29th.

21. Mr. Kulasingham spoke with Bill Neufeld, Vector's Vice-President of Canadian Operations. The Ear Falls project was within Mr. Neufeld's area of responsibility. Mr. Kulasingham explained he chose to make arrangements with Vector because it had been doing work for SNC at the Ear Falls Project and because Vector was the only contractor on site that was a signatory to a collective agreement with the applicant. SNC had been negotiating with Vector to take on some grouting work and had advised Vector a few weeks earlier that there might be some additional work. The conversation with Mr. Neufeld was brief. Vector simply agreed to do whatever SNC needed. The conversation ended with Mr. Kulasingham and Mr. Neufeld agreeing that their local people at the Ear Falls Project would sort out the details. Subsequently, Mr. Neufeld advised Mr. Kulasingham that he had advised the local Vector people about the arrangement to take on responsibility for the site service work. Mr. Kulasingham explained that because Vector was doing other work for SNC, the working hours of the labourers for the site service work would be included in the contract for that other work.

22. Mr. Kulasingham acknowledged in his cross-examination that there was no specific written contract between SNC and Vector for the site service work that was done by Messrs. Doucette and Desrochers on November 1st. Because Vector was on a cost plus time and materials contract with SNC, Vector invoiced SNC for the hours worked by the labourers as part of its contractual arrangements with SNC.

23. As far as Mr. Kulasingham was concerned, Vector became responsible for the employment of the construction labourers who were to carry out the critical site service work after Louisbourg left the Ear Falls Project.

24. Mr. Witty was not made aware of the arrangements Mr. Kulasingham had made with Vector until he met with Rick Caldwell, the Division Manager for Vector, on November 10th. Mr. Witty had been under the impression that Aecon would be used by SNC to do the site service work since Aecon representatives had been to the site and he anticipated Aecon would be coming to the Ear Falls Project shortly. Mr. Witty knew in no uncertain terms after speaking to Mr. Kulasingham following his discussion with Mr. Russo that SNC would not directly employ any construction tradesmen and that he had no authority to hire construction labourers on behalf of SNC. I am satisfied that Mr. Witty, as of the afternoon of October 30th was prepared to do the pump watch work himself if he could not find some way to secure construction labourers to do the work without having them employed by SNC. At that point, Mr. Witty knew that someone had to do the pump watch work, Louisbourg, which had been responsible for the site service work, including the pump watch was leaving the Ear Falls Project and that he could not hire construction labourers to do that work as employees of SNC.

25. Later in the afternoon of October 30th, Mr. Doucette came to see Mr. Witty and told him that he and Mr. Desrochers wanted to stay at the Ear Falls Project and continue working there. Mr. Witty testified he told Mr. Doucette that SNC could not hire them. Nevertheless, Mr. Witty said he and Mr. Doucette entered into a "gentleman's agreement" under which he and Mr. Desrochers would stay and look after the pump watch and Mr. Witty would ensure they would get

paid. Mr. Witty said he told Mr. Doucette that he would do his best to get him hired on with the next unionized contractor that comes on to the site. He and Mr. Doucette agreed to that arrangement and shook hands. From that point, Mr. Witty was satisfied to have Mr. Doucette and Mr. Desrochers responsible for carrying out the pump watch work.

26. Mr. Witty explained that he knew Mr. Doucette had been at the Ear Falls Project for some time as he had been working there before Mr. Witty came to the site. Mr. Witty was satisfied that Mr. Doucette, who was an older experienced construction labourer, was reliable. Messrs. Doucette and Desrochers ceased their employment with Louisbourg on October 30th, and as of the evening of October 30th began their pump watch duties at the behest of Mr. Witty.

27. Mr. Witty had told Mr. Doucette that he had his personal word that both he and Mr. Desrochers would be paid, and that if he could not get them hired by another contractor he would put them on his own company's payroll and then invoice SNC for their work.

28. On October 31st Mr. Witty met with the SNC staff first thing in the morning. He explained to them what had taken place and that with Louisbourg gone, the essential services had to be maintained. When one of the individuals at that meeting (Mr. Witty could not remember who it was) asked about the pumps, Mr. Witty told the meeting that SNC could not hire and did not hire the labourers to do that work but that he had made them a personal promise to look after them.

29. Mr. Witty maintained during his cross-examination that he had told Mr. Doucette that SNC could not hire them, but conceded they were working on his behalf for the benefit of SNC. Mr. Witty also agreed that he had provided them with his contact information should there be an emergency and that either he or an SNC supervisor would verify their hours of work. He also agreed the time sheets filled in by Messrs. Doucette and Desrochers were submitted to Vector for payment after they had been approved. When pressed about the arrangements he had made with Mr. Doucette, Mr. Witty said he did not hire them on behalf of SNC but was prepared to have them do the work that needed to be done because they had offered to remain at the project and he would ensure they would be paid, either by a union contractor engaged by SNC or by him.

30. Mr. Witty also conceded in cross-examination that Messrs. Doucette and Desrochers were employees but suggested they were not employed by anyone during the week of October 31st to November 7th. (The applicant had issued referral slips to Mr. Doucette and Mr. Desrochers dated November 7th (Exhibit Nos. 15 and 16) for employment with Vector.) Mr. Witty also agreed that Messrs. Doucette and Desrochers would have contacted either him or John Purnell, another SNC representative, about their work during the period between October 31st and November 7th if any issue arose that needed attention.

31. Mr. Doucette testified that Mr. Witty had approached him and Mr. Desrochers and asked them whether they would stay on to do the pump watch after he learned Louisbourg was off the job and he was being laid off. Mr. Doucette agreed that he had not had much to do with Mr. Witty before that time because he only dealt with Louisbourg. He agreed that Mr. Witty had given him and Mr. Desrochers a telephone number to call in case of an emergency but he did not know who he'd be calling as he never had to do so. Mr. Doucette and Mr. Desrochers agreed between themselves what hours they would each work on the pump watch. Mr. Desrochers was on the day shift while Mr. Doucette worked the night shift. Mr. Doucette also said that he had asked Mr.

Witty about how they would be paid. Mr. Witty told him he did not quite know but assured him they would be paid. Mr. Doucette indicated he was prepared to trust Mr. Witty and accepted his assurance about being paid because he thought Mr. Witty seemed like a pretty straight shooter.

32. Mr. Doucette in his examination in chief also said he thought Mr. Witty was his boss after Louisbourg left the Ear Falls Project because that was who he got orders from. In his cross examination, Mr. Doucette agreed he had understood that SNC had not hired him. He said he knew SNC only hired subcontractors for labour. He also said he did not know whether SNC had signed a Labourers' collective agreement. He agreed Mr. Witty did not give him instructions about what to do. He knew what was involved with doing the pump watch work. If something occurred he was to call the number he had been given and was also instructed by Mr. Witty that he was not to go down into the excavation without someone else present. He said Mr. Witty was very safety conscious. He also agreed the only work he did that week was monitoring the pumps to ensure they were operating and that water was coming out.

33. Mr. Doucette also acknowledged in his cross-examination that he had had no expectation that SNC would be hiring him. He also agreed that Mr. Witty told him they would be paid but that it would not be SNC who would be paying for them for their work. He acknowledged that he expected another union contractor would be paying them because they were working at a union job site.

34. In his redirect examination Mr. Doucette said he did not really know who his employer was between the time Louisbourg left and when he signed on with Vector. He testified that he did not know who would be paying them but he had understood it would not be SNC when Mr. Witty told him he did not know who would be responsible for paying them. Mr. Doucette candidly stated that he knew SNC would not be hiring them because SNC does not hire labourers to work for them on their construction projects.

35. Mr. Doucette also said he had no idea that he would be hired on by Vector and had never heard about Vector between October 31st and November 7th. Mr. Doucette was ultimately hired on by Vector and after he signed on with them was paid for the work he did between October 31st and November 7th.

36. Mr. Doucette and Mr. Desrochers used the Louisbourg time sheets they had, and simply cut off Louisbourg's name from them when they were submitted to SNC. Mr. Doucette explained he and Mr. Desrochers would fill out their time sheets and give them either to Mr. Witty or Mr. Purnell for approval.

37. Mr. Desrochers also testified about what had taken place. He had said that Mr. Doucette had told him that Mr. Witty was interested in having them do the pump watch work. He agreed that he did not need any instruction about what to do. While he indicated in his examination in chief that he was being employed by SNC, he acknowledged in his cross-examination that SNC does not normally hire labourers and that he expected he would be hired on and be paid by another union contractor. He also conceded it was not really very important to him who was his employer at that site because the entire site was a union project and all the employers on that site had to comply with the Labourers' collective agreement.

38. Mr. Desrochers also testified about being assigned to do some work in the switchyard some time during the latter part of the second week. He had been told to go to the switchyard by Mr. Purnell and to report to Kim Gosselin. He said Mr. Gosselin had given him instructions and directions about what work was to be done.

39. Mr. Kulasingham testified in reply that Mr. Gosselin was an employee of Venshore Mechanical, a mechanical and millwright contractor that was signatory to a number of collective agreements. Venshore Mechanical was a contractor who did work at both the powerhouse and the switchyard and was engaged directly by SNC and was also a subcontractor to Louisbourg. Mr. Kulasingham said he had understood Mr. Gosselin was an operating engineer who had been working in the switchyard. Mr. Kulasingham also explained that with Louisbourg demobilizing, it was important to avoid or at least minimize any disruption in the ongoing work at the Ear Falls Project. To that end, Mr. Kulasingham contracted subcontractors directly to have them continue with their work. He said he contacted three primary subcontractors to that end: Loucon Electrical, Venshore Mechanical and Vector.

40. Mr. Kulasingham was adamant that Mr. Gosselin, who gave instructions and directions to Mr. Desrochers about the work he was to do in the switchyard was never an employee of SNC, was not on SNC's payroll and was never paid by SNC for any work. Mr. Kulasingham's testimony in reply was not challenged.

41. Mr. Neufeld provided evidence through a witness statement the parties agreed would be received by the Board. Mr. Neufeld confirmed the discussions he had had with Mr. Kulasingham. Mr. Neufeld was in negotiations with Mr. Kulasingham about certain grouting work and had had earlier discussions at the beginning of October with SNC about that grouting work. Mr. Neufeld recalled his negotiations with Mr. Kulasingham about the grouting work took place around October 22nd that subsequently resulted in a letter of award for that work dated October 26, 2007 (Exhibit No. 1). That grouting contract said nothing about providing site services.

42. Mr. Neufeld had also been contacted by the project manager at the Ear Falls Project (Andy Koslowski) to find out whether Vector might be interested in taking on a larger role at that project, including providing labour at the site because there was some possibility that Louisbourg might be leaving the job or its scope of work might be reduced. Mr. Neufeld indicated it was a very general discussion. He told Mr. Koslowski Vector would be interested. Subsequently Mr. Neufeld again spoke with Mr. Kulasingham on October 29th. Paragraphs 6, 7 and 8 of Mr. Neufeld's statement provided:

6. On October 29, 2007, I received a telephone call from Damian [Mr. Kulasingham], who advised me that Louisbourg had been advised of the termination of its contract, and that Louisbourg would be leaving the site. Damian advised me that there were certain services at the Lac Seul Project for which labour was required, and asked whether Vector was prepared to provide labour for the Lac Seul Project. As Vector was already on-site, was signatory to the labourers' collective agreement and had a good relationship with the Union, I agreed that Vector would provide the labour that was required at the site. We did not discuss at that time the specific individuals that were required, and I left it to Damian to make the specific arrangements with Vector representatives.

7. After my discussion with Damian, I called Rick Caldwell, the Division Manager for Vector and the individual directly responsible for Vector's work on the Lac Seul Project, to advise him of my agreement with SLPO to provide labour at the site, and to inform him that he could expect to hear from SLPO with respect to Vector hiring labourers on the Lac Seul Project.

8. Thereafter, on November 1, 2007, I met with Damian and Andy in Toronto to discuss the grouting work. During that meeting, Damian thanked me for agreeing, on behalf of Vector, to provide the labour that was required on the site. My telephone call with Rick was definitely prior to this meeting.

It was clear from the evidence of both Mr. Kulasingham and Mr. Neufeld that as far as both SNC and Vector were concerned Vector had taken on the responsibility for employing the construction labourers working at the Ear Falls Project once Louisbourg had left the site.

43. Sheldon Chamberlain had been employed by SNC at the Ear Falls Project as a safety supervisor at the times material to this application. He gave evidence by way of a witness statement and in oral testimony at the hearing of this matter. At the time he provided his witness statement and testified at the hearing he had ceased being an employee of SNC. He had returned to work for his former employer, Comstock Canada in Thompson Manitoba. Mr. Chamberlain had worked for Comstock Canada as the Divisional Safety Coordinator prior to coming to work for SNC at the Ear Falls Project. He had also been in an Ironworkers bargaining unit and said that based on his history as both an Ironworker and a Comstock employee he had a good deal of experience in union issues and administration.

44. Mr. Chamberlain explained he had expressed concerns to both Mr. Witty and Mr. Purnell about ensuring the pumps, lights and heaters remained functional during the period Louisbourg was demolishing so that there was no flooding or freezing. Mr. Chamberlain in his statement wrote he was aware it would be important to consider union issues in dealing with those concerns and raised them with Mr. Witty.

45. Mr. Chamberlain learned from Mr. Witty on October 30th that two labourers who had been employed by Louisbourg had offered to remain at the Ear Falls Project to monitor the pumps. Mr. Chamberlain discussed with Mr. Witty the need to ensure that SNC did not hire those two labourers. Mr. Witty told Mr. Chamberlain they would be employed by a subcontractor.

46. Mr. Chamberlain spoke with Mr. Caldwell after his discussion with Mr. Witty. Mr. Chamberlain indicated in his statement that he explained to Mr. Caldwell that labourers were required on site to perform certain work and asked him whether Vector was prepared to hire those two individuals. He and Mr. Caldwell discussed Workplace Safety and Insurance Board liability and the ongoing relationship between SNC and Vector. Mr. Chamberlain assured Mr. Caldwell Vector would be paid by SNC under the cost plus time and materials contract SNC had with Vector. According to Mr. Chamberlain, Mr. Caldwell agreed that Vector would hire and pay those labourers for the work they did at the Ear Falls Project as of October 30, 2007. Mr. Chamberlain acknowledged in his cross-examination relating to the discussion he had with Mr. Caldwell that one employer would not accept liability for the WSIB assessments or health and safety obligations of another employer but was adamant that Mr. Caldwell had understood his obligations as the employer of the construction labourers and was prepared to take them on as Vector's employees as of October 30th.

47. Mr. Chamberlain in cross-examination acknowledged, as a safety supervisor, the importance of having competent supervision over employees. He also accepted the work done by the two construction labourers was critical in ensuring the safety of the project since a failure of the pumps would lead to flooding, physical damage and delays to the project.

48. Mr. Chamberlain was adamant the construction labourers became employees of Vector when they ceased working for Louisbourg but did concede no one from Vector was on site to supervise them. He also acknowledged that no one was designated as their supervisor but believed they would know who to contact if there was an issue with the pumps.

49. Mr. Chamberlain signed time sheets for Messrs. Desrochers and Doucette in respect of the work they did on November 6th and 7th. Mr. Witty in his evidence explained that he had signed their time sheets for October 30, 31 and November 1 and Mr. Purnell had signed their time sheets for their time later that week. Mr. Chamberlain explained Mr. Witty had instructed him to sign the time sheets. Mr. Chamberlain said he had in the past signed time sheets for employees of other subcontractors on behalf of SNC as a way of acknowledging that work was done because subcontractors were often doing work on a time and materials basis. He said he signed the time sheets to confirm they were eligible for payment from Vector for their work.

50. Mr. Chamberlain conceded no one from Vector had approved the time sheets for Messrs. Desrochers and Doucette because there was no one from Vector at the site with the authority to approve time sheets.

51. Mr. Caldwell also provided evidence through a witness statement and oral testimony at the hearing. He confirmed the discussions he had had with Mr. Chamberlain. He wrote in his statement:

The two labourers, Mr. Doucette and Mr. Desrochers, were put on our payroll as of October 30, 2007 and October 31, 2007 respectively. It was Vector's intention that these individuals became Vector employees as of that date. ...

As Vector and SLPO had been close to finalizing the terms of the Letter of Award at the time I spoke with Mr. Chamberlain, I did not see a problem with hiring the two labourers and paying them through an existing Purchase Order, which is eventually what Vector did. When I spoke with Mr. Chamberlain during the week prior to Vector mobilizing onto the site, we agreed that this work would be part of the Time and Materials agreement.

I included the wages for these two labourers under an existing Purchase Order, which is basically an invoice with a reference number attached to it.

Mr. Caldwell also advised that Vector did not begin its mobilization at the Ear Falls Project until around November 4th and that he had not had discussions or met with either Mr. Desrochers or Mr. Doucette until some two weeks later.

52. In cross-examination, Mr. Caldwell agreed Vector did not begin supervision of Messrs. Desrochers and Doucette until November 7th when Vector took on the responsibility for the pumps. He also said that on November 5th Vector had put those two individuals on its payroll retroactive to the end of October. He agreed that Vector had no reason to hire or employ Messrs.

Doucette and Desrochers other than being requested to do so by SNC. Mr. Caldwell explained Messrs. Doucette and Desrochers went through the Vector hiring process (it has a "hire on package" it gives to employees) on November 7th when they filled out the various employment forms Vector requires. He attempted to name hire the employees Mr. Chamberlain had recommended to him, in addition to Messrs. Doucette and Desrochers.

53. The applicant provided referral slips for Messrs. Doucette and Desrochers dated November 7th to Vector. Mr. Caldwell also agreed he did not back date the hiring of any other labourer but did back date the hiring of Messrs. Doucette and Desrochers because he had been asked to do so by SNC. In his re-direct examination, Mr. Caldwell said that he had agreed to hire those two labourers when he had spoken with Mr. Chamberlain at the end of October and he had understood that it was Vector's obligation to pay them for the work they did as of October 30th.

54. Mr. Caldwell also agreed in his cross-examination that in his experience with SNC he had understood that SNC likes everything to be in writing where it is clear what it expects Vector to do and what its obligations are. He also conceded that Vector had never obtained a specific purchase order from SNC that applied to the pump watch work that was done at the Ear Falls project from October 30th to November 7th. On and after November 7th, the pump watch responsibility was a part of Vector's agreement with SNC.

55. SNC sought to make arrangements to have the pump watch work continue at the Ear Falls Project with two members of the applicant doing that work without having those two construction labourers become their employees. There can be no doubt on the evidence presented that Mr. Witty did not have the authority to hire Messrs. Desrochers and Doucette as employees of SNC. Moreover, both Messrs. Desrochers and Doucette understood SNC did not hire labourers and they did not expect to be employed by SNC at the Ear Falls Project. Because the Ear Falls project was a union job, as Mr. Desrochers testified, it really did not matter to him and likely not to Mr. Doucette too who their employer was at that site as they would be paid for the work they did in accordance with their collective agreement.

56. I am satisfied, and the applicant did not seriously dispute, that by the end of the day on October 30th SNC had secured the agreement of Vector through Mr. Kulasingham and Mr. Neufeld, and through Mr. Chamberlain and Mr. Caldwell to take on Messrs. Doucette and Desrochers as employees as of October 30, 2007 and certainly before this application for certification was filed. The issue is whether despite the agreement between SNC and Vector, SNC was their employer on November 1st for purposes of the Act.

57. The applicant contends the actual facts can only point to one conclusion—SNC was the employer of Messrs. Doucette and Desrochers for the period between October 30 and November 7 because they were under its direction and control for that entire period. They offered to remain at work at that site and Mr. Witty, as the SNC representative, accepted their offer because he knew how vital it was to have that work continue without interruption. Mr. Witty was responsible for what they did during that period. All the normal indicia "on the ground" demonstrate, according to the applicant, that SNC, whether it wanted to or not, became their employer. The applicant argued SNC through Mr. Witty engaged them to do work on its behalf and for its benefit at the Ear Falls Project. Mr. Witty was the individual to whom they were expected to report should the need arise. SNC was ultimately responsible for their remuneration and through Mr. Witty determined what they did and when they did it.

58. The applicant points out, and it was not disputed, that Vector exercised no supervision or control over those two individuals until well after November 1st. Mr. Caldwell did not even know who Messrs. Doucette and Desrochers were until after he arrived at the Ear Falls Project.

59. The applicant submitted all the usual indicia applied by the Board clearly point to SNC being their employer during that one week period. They were under the supervision and control of SNC through Mr. Witty. SNC through Mr. Witty accepted it was ultimately responsible for ensuring they were paid. The only people with responsibility for health and safety at the Ear Falls Project were there on behalf of SNC. The only entity with the authority to deal with any issues relating to what Messrs. Desrochers and Doucette did during that period was SNC since no other entity was present at the Ear Falls Project with responsibility for the pump watch work.

60. The applicant also asserts that Vector could not be viewed as their employer on November 1st on any objective basis. It had no supervision at the Ear Falls Project in respect of the pump watch. It also submitted there was no contractual relationship between Vector and SNC in respect of those two individuals as of October 31st or November 1st, and the evidence of Mr. Caldwell made it abundantly clear Vector did not have any role in supervising Messrs. Doucette and Desrochers until November 7th at the earliest.

61. The applicant derided the suggestion in Mr. Witty's evidence that he would have put Messrs. Desrochers and Doucette on his company's payroll in order to keep them working at the site when he knew he was not permitted by SNC to have them hired as SNC employees. The applicant argued it was clear from the evidence that Mr. Witty did not do so and never actually intended to do so. While Mr. Witty was their supervisor and exercised control over their work as their employer, he was for all intents and purposes, acting on behalf of SNC even if he was not authorized by SNC to do so. The applicant submits Mr. Witty was simply making an after the fact rationalization for what had taken place.

62. In essence, the applicant submits the arrangement SNC had with Vector was nothing more than an attempt by SNC to back date the effective date Messrs. Doucette and Desrochers were employed by Vector in order to avoid the consequences of it having effectively become their employer when it through Mr. Witty engaged Messrs. Desrochers and Doucette to monitor the pumps at the Ear Falls Project from October 30th until November 7th. The applicant argues in these circumstances no one other than SNC was their employer on November 1st.

63. In this case I have to decide whether SNC was the employer of Messrs. Doucette and Desrochers on November 1, 2007. It is neither necessary nor appropriate for me to determine whether Mr. Witty through 1041536 Alberta Ltd. or Vector or some other entity was their employer on that date since the applicant did not seek to have any entity other than SNC found as the employer of Messrs. Doucette and Desrochers and no one other than SNC were responding parties in these applications. See *Dare Personnel Inc.*, [1995] OLRB Rep. July 935 where the Board wrote at page 935:

At the outset of the hearing the parties agreed that it was appropriate for the Board to deal first with the contention of the responding parties, *Dare Personnel Inc.* ("Dare") and 1092009 Ontario Inc., c.o.b. as *Personnel Force* ("P.. Inc."), that they are not the employers of the individuals for whom the union seeks bargaining rights. The question before the Board therefore is "are the persons for whom the union seeks bargaining rights employees of Dare

and P.. Inc.". For reasons which will become apparent, it is important to note at the outset that this is the question before the Board not the broader question, namely "who is the employer of the persons in question".

The Board confirmed that approach when it wrote at page 941:

It would not be appropriate for us to conclude that an entity, which is not a party to these proceedings, was the employer of the temporary electricians. In any event, as was noted at the outset of this decision, the question before us is whether Dare and P.F. Inc. are the employers of the temporary electricians. Having concluded that they are not, we can go no further.

64. The applicant has clearly established, in my view, that Messrs. Desrochers and Doucette were employees within the meaning of the Act and were on November 1st working at the behest of Mr. Witty under his direction and control. While they did not need much direction or any actual supervision in carrying out their duties, they were responsible to Mr. Witty for what they did on that day, as well as the day before and for several days after. Although they each determined when they would work, they were required, as between the two of them, to monitor the pumps throughout the entire day. Indeed, they divided up their work into two twelve hour shifts beginning October 30th and continued to work in that fashion until Vector came on to the site to take over direct supervision of them some days after November 4th.

65. Both the applicant and SNC addressed a number of Board's decisions determining who was the employer and referred to the various factors the Board has applied in coming to a conclusion. The parties did not disagree with the principles as set out in the cases beginning with *York Condominium Corporation No. 46*, [1977] OLRB Rep. Oct. 645 and *Sutton Place Hotel*, [1980] OLRB Rep. Oct. 1538. A good summary of those authorities, in my view, is found in *Eso Imperial Oil Limited*, [1997] OLRB Rep. Sept./Oct. 849 where the Board at pages 851-52 discussed its approach to this issue when it wrote:

11. Counsel referred to the following cases in argument:, *Templet Services*, [1974] OLRB Rep. Sept. 606; *York Condominium Corporation*, [1977] OLRB Rep. Oct. 645; *The Tower Company (1961) Ltd.*, [1979] OLRB Rep. June 583; *Sutton Place Hotel*, [1980] OLRB Rep. Oct. 1538; *Re Ford Motor Co. and Plant Guard Workers*, (1981) 1 L.A.C. (3d) 141 (MacDowell); *K-Mart Canada Ltd.*, [1983] OLRB Rep. May 649; *Re Royal Ontario Museum and Service Employees*, (1984) 16 L.A.C. (3d) 1 (Adams); *Sylvania Lighting Services*, [1985] OLRB Rep. June 1173; *Travelers Motor Inn*, [1988] OLRB Rep. Feb. 206; *Nichrin Inc.*, [1991] OLRB Rep. Jan. 78; *Provincial Store Fixtures*, [unreported OLRB decision dated March 30, 1993]; *Dare Personnel Inc.*, [1995] OLRB Rep. July 935. There are many more decisions in the Board's jurisprudence which deal with "who is the employer" issues, but the selection referred to by the parties is representative of the evolution of the approach which the Board and arbitrators have taken to the question, both generally and specifically in "personnel agency" cases.

12. Although the Board is always prepared to consider any factor which is relevant, as a general matter, the factors which the Board has considered when faced with a "who is the employer" issue are the ones first compiled in the *York Condominium*, *supra*, decision:

- (1) who exercises direction and control over the employees when they are performing the work;
- (2) who bears the burden of remuneration;
- (3) who has the power to impose discipline;
- (4) who does the hiring;
- (5) who has the authority to discharge;
- (6) who do employees perceive to be their employer;
- (7) the intention to create an employment relationship.

13. None of these factors is necessarily determinative, and the relative significance of any individual factor will depend on the circumstances of the particular case. Having said that, it is apparent that the object of the exercise is to assess the various factors, both individually and in the context of all the other factors, in order to ascertain who has fundamental control over the employment relationship, particularly where the factors point in different directions. In making the assessment and determination, the Board is more concerned with substance than with form; that is, the Board will not permit commercial form to obscure labour relations reality.

14. A natural consequence of this is that the first five factors listed in *York Condominium, supra*, which are indicators of control, have become more important than the last two, which are both more subjective and difficult to gauge. This is consistent with the Board's preference (and the underlying theme of the Act as demonstrated by provisions like subsection 1(4) and section 69) for substance over form, and with the principle that perception and impression cannot be determinative of a question of law (see, *International Union of Canada and Kent Line Ltd.*, (1972) 27 D.L.R. (3d) 105 (Federal Court of Appeal)).

15. When it comes to a question of fundamental control, there is little which is more important than beginning the relationship (hiring), regulating it (direction, control and supervision) and ending it (termination). Accordingly, *York Condominium, supra*, factors 1, 4 and 5 have gained primacy. Indeed, even though the Board (and arbitrators) have been careful to say that it will not necessarily be determinative, decisions like *Dare Personnel, supra*, *Sylvania Lighting, supra* and *Royal Ontario Museum, supra*, demonstrate that direction and control is a very significant factor. At the same time, these decisions also demonstrate that the perception of the employees, and commercial contracts as indicators of intention often carry little weight.

It was undisputed that Mr. Witty was responsible for engaging Messrs. Desrochers and Doucette to carry out the pump watch work at the Ear Falls Project. He undertook to them he would ensure they would be paid for their work. He was, in my view, responsible for their work, at the very least, for several days after they began doing that work following Louisbourg's departure. In that respect it seems to me he was their supervisor for labour relations purposes although he gave them very little direction.

66. If SNC had said or done nothing prior to Mr. Witty having Messrs. Desrochers and Doucette undertake monitoring the pumps then there is little doubt the Board would have held SNC was their employer on the date this certification application was made since Mr. Witty would have been acting within the scope of his authority on behalf of SNC and therefore SNC through Mr. Witty would have had fundamental control over their employment at the times material to the application for certification. See *Ellis-Don Limited*, [1986] OLRB Rep. Aug. 1076; *Gorf Contracting Ltd.*, [1992] OLRB Rep. July 800.

67. In this case, however, the evidence presented by SNC demonstrates it was very sensitive to the "employer" issue well before anything was done to secure labourers to monitor the pumps. Unlike the circumstances in *Gorf Contracting Ltd.* SNC had taken steps to arrange with Vector to hire and pay those construction labourers who continued to work at the Ear Falls Project after Louisbourg left the job before SNC through Mr. Witty had any discussions with them about continuing to work at that project. SNC made it abundantly clear to Mr. Witty that he was not to hire construction labourers on behalf of SNC. The directions Mr. Witty received were reinforced by the discussions Mr. Witty had with Mr. Chamberlain, who made arrangements with Mr. Caldwell about employing those construction labourers.

68. Messrs. Desrochers and Doucette also recognized the situation they were in when they continued to work at the Ear Falls Project. They understood that Mr. Witty could not employ them on behalf of SNC. They nevertheless were satisfied with the assurances they had received from Mr. Witty they would be paid because, as Mr. Doucette said, he thought Mr. Witty was a "straight shooter" and because they expected to be put on the payroll of a union subcontractor. They both knew SNC would neither hire them nor pay them but it really did not matter to them who their employer was because they were on a union job and would be paid in accordance with their collective agreement.

69. There is no doubt the work Messrs. Desrochers and Doucette performed at the Ear Falls project was for the benefit of SNC and that SNC ultimately was responsible for them being paid through its cost plus time and materials contract with Vector.

70. In *Gorf Contracting Ltd.* the Board came to the conclusion that Gorf Contracting Ltd. ("Gorf") and not the individual project manager in that case was the employer based on the circumstances relating to those individuals continuing to perform work after the employer that had initially employed them went bankrupt. Gorf wanted those individuals to continue working on the project and made arrangements with those individuals through its project manager to continue performing the work they had been doing on that project. The Board observed that the four electricians who were the subject of the application met with the project manager in the presence of the principal of Gorf and discussed what they would be paid if they continued at work based on what Gorf paid its skilled tradespeople. The Board also observed those electricians understood they would be employed by Gorf. In finding Gorf was their employer, the Board wrote at page 806:

26. ... The respondent argues that if the electricians are found to be employees, they are employees of Mike Norkum, and not Gorf. In its submission, it was Mike Norkum who hired them and supervised them and exercised fundamental control over their work. As we have indicated, we are satisfied that the true employer of the electricians during the week of January 22 to 29 was Gorf. Mike Norkum may have been the person with whom all

of the discussions as to the arrangements for that week occurred. However, in our view, this is the *only* factor that might point to an employment relationship with him. We need not determine whether indeed Mark Norkum took part in the discussion in the Gorf trailer on January 22, because even if we accept the evidence of Mark and Mike Norkum, Mark Norkum was certainly present in the room and heard what was being discussed. Mark Norkum had agreed with Mike earlier in the day that arrangements should be made to keep the electricians on the job. Mark Norkum understood that the cost of the electricians' services on the job for that week would eventually be borne by Gorf. In all of the discussions with the electricians or between the Norkums, there was no indication, until January 30, that Mike Norkum considered them as his employees (just as there had been no indication that they were considered as independent contractors).

27. Although Mike Norkum took the position with the employees on January 30 that they were not employees of Gorf, we are reluctant to give any weight to this, as it is a position taken after Gorf received the notice of the application. Despite his evidence, we are not convinced that Mike Norkum did not have know [sic] of the application by this time. Likewise, we need not give any weight to the electricians' evidence that they filled out Gorf application forms and TD1 forms during the week of January 27. It is not essential to our findings and as evidence of positions taken after the application was filed, we prefer in this case not to have regard to it.

28. What is clear is that for all parties, the priority was simply to keep the work going. The elements necessary to ensure this were the electricians' agreement to remain on the job and the parties' agreement on the wage rate. The lack of clarity amongst the parties as to a definition of the relationship does not militate against a finding that Gorf employed the electricians.

The circumstances before me in this case are markedly different.

71. Mr. Witty advised Messrs. Doucette and Desrochers that he would ensure they would be paid. He also advised them he would have them put on a subcontractor's payroll. He told them he could not hire them and they knew SNC would not employ them. I accept that, as the Board noted in *Esso Imperial Oil Limited*, in determining whether the responding party in a certification proceeding is the employer, "the Board is more concerned with substance than with form; that is, the Board will not permit commercial form to obscure labour relations reality", and that the parties' intentions and employees' perception are not as significant as the other objective factors referred in *York Condominium Corporation No. 46*, [1977] OLRB Rep. Oct. 645. Nevertheless, it is also significant, in my view, to examine carefully what the parties had done with respect to creating the situation in which the identity of the employer became an issue.

72. I am satisfied that in this case Mr. Witty, Mr. Chamberlain and the affected employees all understood and accepted well before the application for certification was filed that SNC would not, under any circumstances, directly employ construction labourers to work at the Ear Falls Project. Moreover, I find that before Mr. Witty had assigned Messrs. Doucette and Desrochers to do the pump watch work late in the afternoon of October 30th Vector was prepared to accept the obligations associated with being their employer based on the discussions between Mr. Kulasingham and Mr. Neufeld and between Mr. Chamberlain and Mr. Caldwell. What is clear to

me is that Mr. Witty was not representing SNC when he agreed to have Messrs. Doucette and Desrochers continue with the pump watch work at the Ear Falls Project. While I also accept Mr. Witty did not know it was Vector that had made an agreement with SNC to employ the construction labourers for the pump watch work as of October 30th, it is, in my view, immaterial to the result whether Mr. Witty was at that particular moment acting on his own behalf or on behalf of an unknown principal. He, as the person responsible for the Ear Falls Project, needed the work to continue and he knew SNC would not directly hire trades people. He was prepared to do the work himself and deal with the union consequences later. Since he made arrangements with Messrs. Doucette and Desrochers to do that work, and in the course of doing so made it clear to them SNC was not going to employ them but that they would be paid and he would take steps to have them put on a subcontractor's payroll, the identity of their actual employer was of little or no significance to them at the time they started working.

73. I find that Mr. Witty, either on his own behalf or on behalf of Vector, at the request of SNC, exercised direction and control over the work carried out by Messrs. Desrochers and Doucette on November 1st. He accepted he would ensure those two individuals would be paid for the work they did at the Ear Falls Project and ultimately they were put on Vector's payroll. At no time from the moment Mr. Witty engaged in discussions with Messrs. Desrochers and Doucette about continuing to work at the Ear Falls Project were they led to believe they were going to be employed by SNC. To the contrary, it was made clear to them SNC would not employ them and they understood that SNC was not going to be their employer at any time.

74. SNC explicitly told Mr. Witty (and Mr. Chamberlain also understood) that SNC would not, under any circumstances, directly employ construction trades people. SNC secured Vector's agreement that it would hire and employ the construction labourers working at Ear Falls Project after Louisbourg left the job site. Mr. Witty advised Messrs. Desrochers and Doucette when he engaged them to continue working that although they were not being employed by SNC, he would make sure they would be paid. Messrs. Desrochers and Doucette understood and accepted they were not being employed by SNC.

75. In these circumstances, I am satisfied that although Mr. Witty's relationship with Messrs. Desrochers and Doucette leads me to conclude that he had, during the period between October 30th and November 4th "fundamental control" over their work as that term has been used by the Board since the Board's decision in *Sutton Place Hotel*, Mr. Witty was not exercising that fundamental control on behalf of SNC. In the result I find that SNC was not their employer.

76. As I pointed out earlier, given the nature of the issue before me, it is not necessary for the Board to determine whether Mr. Witty through 1041536 Alberta Ltd. or Vector was their employer on November 1, 2007, the date the application for certification was filed.

77. In the result the application for certification in Board File No. 2442-07-R is dismissed.

78. Having regard to the parties' agreement that the application under section under sections 69 and 1(4) of the Act in Board File No. 2936-07-R was dependent on the Board finding that SNC was the employer of Messrs. Doucette and Desrochers on November 1, 2007, the application in Board File No. 2936-07-R is also dismissed.

1906-10-R Canadian Union of Public Employees, Applicant v. The Corporation of The Town of Tecumseh, Responding Party

Certification – Reconsideration – Timeliness – In its response to the application for certification the employer indicated its disagreement with both the description of the bargaining unit and the union’s estimate of individuals in it; and also checked “no” in response to the question whether it was giving an 8.1 notice – One day after the two day statutory time limit expired, the employer wrote the Board saying the “no” was inadvertent and it had provided the necessary information under 8.1 – The Board found the notice untimely; one week after the vote was taken and counted the employer applied for reconsideration – The Board rejected the employer’s first argument that it had complied with the Act and given notice – The Board found the “no” coupled with the employer’s failure to answer the supplementary question in addition to the statutory requirement indicated to it that notice was not given – The Board also rejected the alternative argument that it should exercise its discretion to extend the notice, when it found, assuming it had such discretion, that it would only grant relief in the most compelling circumstances, and there were none in these circumstances – Request for reconsideration denied

BEFORE: *Tanja Wacyk*, Vice-Chair, and Board Members *P. LeMay* and *S. McManus*.

DECISION OF THE BOARD: October 28, 2010

1. This is an application for reconsideration of the Board's decision dated September 17, 2010. That decision held that the responding party's attempt to essentially amend its response to the application for certification to give notice pursuant to section 8.1 was untimely and would not be considered.

BACKGROUND:

2. The application for certification in this matter was filed with the Board and served on the responding party on September 13, 2010. As required by section 7(14) of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the “Act”) and Rule 9.5 of the Board’s Rules of Procedure, the responding party filed its response (“Form A-2”) and delivered a copy to the applicant on September 15, 2010.

3. In its response to the application for certification, the responding party indicated that it disagreed with the bargaining unit description included in the application, and disagreed with the applicant’s estimate of the number of individuals in the applied for bargaining unit.

4. The responding party also clearly checked “No” in response to the question “Is the responding party giving notice under section 8.1 of the Act”. Consistent with that answer, the responding party did not respond to the supplementary question of whether, if giving notice under 8.1 of the Act, it agreed that the ballots cast in the representation vote should be counted.

5. By decision, dated September 16, 2010, the Board directed that a representation vote be taken in this application. In light of the responding party’s indication that it was not giving an 8.1 notice, there was no reference to 8.1 in the decision.

6. Subsequent to the Board having issued its decision ordering the vote, by correspondence of the same date i.e. September 16, 2010, counsel for the responding party communicated the following to the Board:

We have received the Board's Pre-Vote Certification Worksheet. Upon review of the Worksheet and our Response it is evident that in paragraph 6 of the Response we checked off "no" with respect to s.8.1 of the Act. This was done inadvertently and notwithstanding this, we have provided the Notice required pursuant to s.8.1(2).

As such it is our position that the procedures set out in s.8.1(5) should be followed.

7. By decision dated September 17, 2010 decision, the Panel pointed out that section 8.1(3) of the Act provides as follows:

8.1 (3) A notice under subsection (1) must be given within two days (excluding Saturdays, Sundays and holidays) after the day on which the employer receives the application for certification.

8. The Panel held that despite the responding party's indication that it had checked "No" on the Form A-2 through inadvertence, this was a clear indication that it was not giving notice of an 8.1 challenge. We found that the subsequent attempt to give the 8.1 notice was filed outside of the two day statutory timeframe, which in this instance was September 15, 2010. Consequently, and consistent with the Board's jurisprudence in this regard, we held that the section 8.1 notice was not timely and would not be considered.

9. The vote proceeded as ordered on September 20, 2010. Of the 28 persons on the voters list, 18 cast ballots. While it appears the applicant initially challenged the inclusion of nine crossing guards in the bargaining unit, it withdrew its challenge prior to the vote. The ballots were counted, resulting in 12 ballots cast in favour of the applicant and 6 marked against. There are no ballots remaining that have been segregated and not counted.

10. On September 27, 2010, the responding party filed this reconsideration request.

11. The request is opposed by the applicant. The applicant maintains the 8.1 notice is out of time as it came outside of the statutory timeline of two days after the responding party's receipt of the application for certification. The applicant also points out that the majority of the employees exercised their right to vote, and that 70% [although it is actually 67%] of those persons who cast a ballot did so in favour of the union, indicating their desire to be represented by a union.

RECONSIDERATION REQUEST AND ANALYSIS:

12. The first ground for the reconsideration is that subsection 8.1(2) sets out a complete code for the information required by the Act to give an 8.1 notice, and that the responding party provided all the required information. The relevant provisions of section 8.1 provide:

8.1 (1) If the employer disagrees with the trade union's estimate, included in the application for certification, of the number of individuals in the unit, the employer may give the Board a notice that it disagrees with that estimate.

Content of notice

- (2) A notice under subsection (1) must include,
 - (a) the description of the bargaining unit that the employer proposes or a statement that the employer agrees with the description of the bargaining unit included in the application for certification;
 - (b) the employer's estimate of the number of individuals in the bargaining unit described in the application for certification; and
 - (c) if the employer proposes a different bargaining unit from that described in the application for certification, the employer's estimate of the number of individuals in the bargaining unit the employer proposes.

Deadline for notice

- (3) A notice under subsection (1) must be given within two days (excluding Saturdays, Sundays and holidays) after the day on which the employer receives the application for certification.

...

13. The responding party argues that despite what it characterizes now as the unintentional clerical error indicating that it was not giving a section 8.1 notice, that it has complied with all the requirements of the Act, and was, in fact, giving such a notice. The responding party relies on having indicated it disagreed with the description of the bargaining unit included in the application for certification, as well as with the applicant's estimate of the number of individuals in the proposed bargaining unit, and its proposal of a different bargaining unit. It submits it would make no sense to provide that information if it were not giving an 8.1 notice.

14. Section 110(18) of the Act provides:

110 (18) The chair may make rules to expedite proceedings to which the following provisions apply:

- 0.1 Section 8.1 (Disagreement by employer with union's estimate).

15. Rule 9.5 of the Board's *Rules of Procedure* requires:

9.5 A responding party must file a response to the application, including Schedules A and B, not later than two (2) days after the application was delivered to it.

16. The Board *Rules of Procedure* identify Form A-2 as the Response to Application for Certification form to be filed, and it is that form which expressly requires a responding party to indicate if it is giving a section 8.1 notice, and if so, whether it is agreeable to having the vote counted in any event.

17. The information relied upon by the responding party on its Form A-2 is the same information required of, and provided by all responding parties regardless of whether they are giving an 8.1 notice. This information informs the parties and the Board regarding other matters required for the certification application to proceed, including voters lists, whether there are any status disputes, and whether there is disagreement regarding the appropriate bargaining unit. Consequently, responding parties are expressly required to indicate if they are giving notice under section 8.1 of the Act, and if so, whether they agree the ballots should be counted.

18. The requirement for clarity, combined with the two day statutory timeframe reflects the significance of an 8.1 notice. Once a notice is given, the applicant has two days prior to the vote to investigate the number of individuals the responding party maintains are in the bargaining unit, and decide whether it wishes to concede the 8.1 challenge. If an applicant does so prior to the vote, pursuant to section 10(4) of the Act, it does not risk a statutory one year bar to reapply. Once the vote is taken and counted, a dismissal may result in a one year bar to reapplying, pursuant to section 10(3) of the Act.

19. In this instance, we find that while the responding party provided the information required by the Board in its Form A-2, it did not do so in the context of an 8.1 challenge. Rather, whether through inadvertence or otherwise, the responding party expressly indicated that it was not giving notice under section 8.1, and then, in effect, confirmed that by not completing the supplementary question of whether, in event of a section 8.1 challenge, it agreed that the ballots be counted.

20. In these circumstances we do not find that notice of an 8.1 challenge was given.

21. In the alternative, the responding party submits that if the notice was given one day late, the Board has the discretion to accept the notice and extend the time period under the Act. The responding party relies on the Divisional Court decision in *Maystar General Contractors Inc. and IUPAT, Local 1819*, [2007] O.J. No. 1067, as well as the Board's decision in *Universal Workers Union, Labourers' International Union of North America Local 183 v. Christina Homes Ltd. and/or 1357202 Ontario Ltd. and/or Christina West Joint Venture* [2008] Can LII 65315 (On L.R.B.). Both cases deal with an entirely different section of the Act, section 128.1(3) which governs the time frame in card-based applications in the construction industry.

22. In an industrial application such as this one, section 8(5) of the Act directs that a representation vote be held within five days after the date upon which an application has been filed with the Board. This reflects the importance of holding representation votes quickly. It is only in extraordinary circumstances that the Board delays a vote. This is in order to preserve, as best possible, the positions of the voting constituency at the time of the application. This differs from the circumstances in card-based certifications, where in the vast majority there is no subsequent vote to determine union support.

23. The importance of respecting the five day timeframe set out in the Act was well articulated in the Board's decision in *Canadian Union of Public Employees, Local 79 v. The Corporation of the City of Toronto*, [1996] OLRB Rep. July/Aug. 552:

84. ... [I]n opting for "a vote in every case", the Legislature has not simply reverted to the former process for obtaining and conducting a representation vote. Instead, the Legislature has created an entirely new and quite different mechanism, relying on very quick 5-day votes, to measure the employee wishes, while at the same time limiting the employer's opportunity to improperly interfere with the employees' freedom of choice.

85. The secret ballot replaces the signed membership card as the means of testing the employees' appetite for collective bargaining. But like the previous card-based model, the new system is designed to avoid a protracted "campaign" where the union and employer compete for the loyalties of employees. Because of the tight time frames, there is less opportunity for behaviour that could attract unfair labour practice charges (quite a number of these are filed each year and again see: Weiler: "Membership Cards vs. Representation Votes" mentioned above). The new system makes it very clear that time is of the essence: it is not just "a vote in every case"; the statute contemplates a "quick vote in every case".

86. The 5-day time-frame mentioned in the statute is the most critical characteristic of the new certification scheme. It not only defines the nature of the process, it also requires the Board to develop new administrative structures in order to meet the 5-day target. Indeed, it is a target which we think the Board is required to meet if it can; moreover, it is a target which the Legislature must have intended that the Board could meet in most cases, applying the words of the new statutory scheme. The new certification process reflects a legislative trade-off: the elimination of the (relatively) quick card counting model for certification, and the substitution of the quick vote model instead.

...

89. The 5-day time limit defines and colours the whole process. It is a critical element in the new certification mechanism, and an important key to understanding how that mechanism is supposed to work - indeed how it has to work if the time limits are to be met. Some of the things that the Board had to do before simply do not have to be done anymore because the new system does not require them; moreover, if the Board has to choose between a reading of the statute that will facilitate 5-day votes in the ordinary course, and one that will not, we think that the Board should opt for the interpretation that gets the job done in five days. That is what the statute contemplates.

24. If the Board has discretion to extend the time for giving an 8.1 notice, additional time would also have to be granted following the notice in order to relieve against the prejudice to the applicant. This would result in the vote being held outside the five day timeframe mandated by the Act.

25. We are of the view that even if such discretion exists, the statutory requirement to move with dispatch in instances such as this should not be relieved against other than in the most compelling circumstances.

26. The only explanation provided by the responding party regarding its error was that it occurred through “inadvertence” and “clerical error”. This is not sufficiently detailed for the Panel to determine there is a compelling reason to relieve against the two day timeframe within which a section 8.1 notice must be given.

27. It is worth noting that in this instance, the request to extend the time limit for the 8.1 challenge was received one full week after the vote was taken and counted. Further, the responding party acknowledges in its post-vote submissions, that although now resolved between the parties, the issue of the nine cross-walk guards referred to above may again become an issue in the event the responding party’s 8.1 challenge is allowed. To the extent that is the case, we note the cross-walk guards’ ballots were not segregated at the vote. If the applicant were to revive its challenge to their inclusion in the bargaining unit, and succeed, the entire vote would have to be redone.

28. If the Board were to find it has jurisdiction to extend the time for giving a section 8.1 notice and did so in this instance, the clock would be rolled back to September 16, 2010. In other words, more than a week after the workplace parties were advised the union and its supporters had won the vote, they would find themselves back at the beginning of the process – a somewhat extraordinary result, and certainly not one contemplated by the statutory timeframe of 5 days.

29. Consequently, for all of the above reasons, even if the Board has discretion to extend the time for filing a section 8.1 notice, and we make no such finding, we are not persuaded this would be an appropriate circumstance in which to do so.

30. The request for reconsideration is denied.

2022-09-U United Brotherhood of Carpenters and Joiners of America, Local Union 1256, Applicant v. **United Brotherhood of Carpenters and Joiners of America**, Responding Party

Apprehension of Bias – Construction Industry – Practice and Procedure – The applicant alleged an apprehension of bias in that the Vice-Chair deciding the matter (a dispute that the International violated sections 147 and/or 149) had been retained, in his personal capacity as an arbitrator, by the International (and not the Local) to determine the Carpenters ICI Collective Agreement for 2010-2013 – The Board noted that the parties to the Provincial Collective Agreement (the Carpenters’ Employer Bargaining Agency and the Carpenters’ District Council of Ontario [CDC]) were different from the parties before the Board (the International and Local 1256) – The Board noted that the degree of institutional impartiality and independence of the Board is well known and not challenged by the applicant – The Board found that while it may envision a situation in which the conduct of an individual may bring such impartiality and independence into question, it was not the

case where a person acting as an independent adjudicator in a role that involved related but different parties and that required neutrality and credibility somehow compromises his or her independence and neutrality as a Vice-Chair – The Board concludes that an apprehension of bias was not made out – Matter continues

BEFORE: *David A. McKee*, Vice-Chair.

DECISION OF THE BOARD: October 1, 2010

1. This is an application brought pursuant to the provisions of Section 96 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended ("the Act") alleging that the United Brotherhood of Carpenters and Joiners of America (the "International Union") has violated sections 147 and 149 of the Act in requiring United Brotherhood of Carpenters and Joiners of America, Local 1256 ("Local 1256") to become part of the Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (the "CDC"). This decision deals with two issues, the type of adjudication format the Board should adopt in this matter and an allegation of bias on the part of the Vice-Chair.

Consultation or Hearing

2. I have received the parties' submissions with respect to a hearing or a consultation. Local 1256 has a clear antipathy to the idea of a consultation. It refers to a consultation as a choice between a process "in accordance with the rules of natural justice through a hearing or by means of a vice chair engaging in the equivalent of a *séance* to determine the truth of assertions". Local 1256 characterizes it as "the lowest form of adjudication known to democracies".

3. The objection to a consultation *per se* is not well founded: *International Association of Bridge v. Comstock Canada Ltd.*, 2007 CanLII 51789 (ON S.C.D.C.); *International Brotherhood of Electrical Workers Local 1739 v. International Brotherhood of Electrical Workers*, 2007 CanLII 65617 (ON S.C.D.C.).

4. The question is whether in this case, the process of a consultation is appropriate or not. Earlier, in inviting submissions from the parties, I suggested that my preliminary view was that there were few if any areas of factual controversy. I suggested that my reading of the parties' briefs was that there was only one possible conflict with respect to market share outside of the "chemical valley" in Sarnia. Local 1256 characterizes that as an "attack" on its assertion that there was no dispute about this issue.

5. Local 1256 does suggest that there are disputes, but its recitation of them appears to consist of arguments about what conclusions should be drawn from the documents and material filed. It may be right that the Armstrong report incorrectly interprets the data or relied on inappropriate data (as his own report suggests). It may be that the International Union did not consider the position of Local 1256 in the context of the general conclusions of the Armstrong report. It may be that Local 1256 can convince the panel that hears this matter that there are certain matters that must be addressed by way of oral evidence. It has not to date convinced me of that, but I have not heard full argument and may well be entirely wrong.

6. It is in my view appropriate to schedule the matter for a consultation. Should it become apparent in the course of this proceeding that one or more issues must be determined by the hearing of oral evidence, that option is always open to the panel determining the matter. It does not appear to be necessary at this point. Whether the panel hearing it remains of that view will only be determined at the consultation.

Bias

7. With respect to the allegation of actual bias, Local 1256 provides no particulars. With respect to the apprehension of bias it says as follows:

Moreover the Applicant objects to Vice Chair McKee making any decision of substance in this matter. The Vice Chair has a bias in favour of the International or appears to a rationally informed observer as being seen not to be impartial as between the litigants. The Vice Chair was retained by the International and the CDC, and not Local 1256, to determine the Carpenters ICI Collective Agreement for 2010-2013. In exchange for having the employer bargaining agency agreeing to this role for the Vice Chair, the Carpenters voluntarily abandoned their right to strike. The Vice Chair was obviously paid by the Union and the Employers for his services. The appointment was a very high profile one known throughout the industry. The Applicant, while opposing the abandonment of the right to strike and the system of binding arbitration, does not view Mr. McKee's appointment in this regard as inappropriate at all. He was hired to perform a service and he performed that service in a professional manner.

However having accepted this appointment and payment for his services from one side in this particular internal dispute he cannot now act without consent from the other party to the dispute, Local 1256, to determine the internal dispute between Local 1256 and Mr. McKee's client or retaining party. In short there is an obvious and patent conflict of interest and perceived bias in Mr. McKee acting for the International in a high profile matter on consent and then acting, without consent, to determine a dispute between that paying client and one of its affiliates. A Vice Chair cannot serve two masters and in this case he will be seen as doing exactly that. Mr. McKee ought to recuse himself from this matter, should he decline to do so the objection will be pursued.

8. The Carpenters' Union, like all designated trade unions in the construction industry, is required to negotiate a Provincial Collective Agreement every three years with its employer bargaining agency counterpart. April 30, 2010 was the expiry date for the last agreement, so negotiations were anticipated in 2010. The statutory obligation to negotiate renewals to the Provincial Collective Agreement rests on the Carpenters' Employee Bargaining Agency which, while legally a separate entity, is composed of the CDC and the International Union.

Parties to the arbitration and collective agreement

9. The two parties to the Provincial Collective Agreement are the Carpenters' Employer Bargaining Agency (the "Employer") and the CDC, i.e. Carpenters District Council of Ontario,

United Brotherhood of Carpenters and Joiners of America. Neither of those principal parties is a party to this application. The Provincial Collective Agreement itself describes the Union party as:

THE CARPENTERS DISTRICT COUNCIL OF ONTARIO of the United Brotherhood of Carpenters and Joiners of America on behalf of the following affiliated bargaining agents:

- (1) Carpenters' Union, Central Ontario Regional Council
- (2) Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers
- (3) United Brotherhood of Carpenters and Joiners of America; and the following Local Unions; 18, 27, 93, 249, 397, 446, 494, 675, 785, 1256, 1669, 1946, 2041, 2222, and 2486 of the United Brotherhood of Carpenters and Joiners of America; and any local union, Regional Council or District Council subsequently chartered in Ontario.

Thus the CDC conducts the bargaining and is the party to the collective agreement on its own behalf and on behalf of the named parties, which include both Local 1256 and the International Union.

10. Local 1256 is a local union that is covered by the Provincial Collective Agreement. It has specific provisions giving rights and duties to it as does any other local union under the Provincial Collective Agreement. Specific terms relating to Local 1256 and work in its geographic area are found in Article 9.01 (ii), dealing with payments to certain employee benefit trust funds, and the Wage Schedules dealing with wages and other terms and conditions of employment in the Master Portion and the Acoustic and Drywall Appendix. These provisions may all be the subject of bargaining.

11. The International Union is referred to only in Article 26.01:

ARTICLE 26 – INTERNATIONAL LIABILITY

- 26.01 It is further agreed and understood that no liability shall attach to the United Brotherhood of Carpenters and Joiners of America by reason of any unauthorized act of any employee and any employer or of any Local Union, regional Council, District Council, and/or the Carpenters' District Council of Ontario, or official thereof.

The mediation/arbitration process

12. I have no knowledge of the events that gave rise to my appointment. I was contacted by telephone in late February or early March 2010 and was asked if I would act as mediator/arbitrator. I agreed to do so. At some point before March 15, 2010 I was provided with a document. It is a Memorandum dated April 24, 2009 between the Employer and the CDC. Neither Local 1256 nor the International Union were a party to it. In the Memorandum the parties agreed to renew the collective agreement effective May 1, 2010 (thereby eliminating the possibility of a strike or lockout) and agreed to settle all outstanding disputes by negotiation or

ultimately by mediation/arbitration. The Memorandum appointed me, and in the alternative Mr. Rick MacDowell, to act as mediator/arbitrator.

13. Local 1256 says that my presence as mediator/arbitrator was crucial to the deal. I have no knowledge of that, or of any other discussions that took place between the Employer and the CDC. Unlike Local 1256 I was not aware of any of this until February 2010. Accordingly I must accept for purposes of this decision that the identity of the mediator/arbitrator was an essential term of the agreement.

14. One week before the scheduled mediation/arbitration I was advised that there were many issues still on the table. On Monday, March 15, 2010 I was advised that all non-monetary issues had been settled and only a potential wage increase was outstanding. However before that Monday, three local unions had, in fact, settled their wage rates informally. The discussions that took place that day were conducted by each local union and employer group over the wage rate increase for their geographic area in the collective agreement. I was involved in some of them but not in others. I was not involved in any discussions involving Local 1256 and the Sarnia Contractors' Association. I do not remember seeing or speaking to anyone from the International Union.

15. At the end of the day there were two areas that had not agreed on the wage rate – Local 2041 (the Ottawa drywall local) and Local 1669 (Thunder Bay). I was unable to mediate a settlement of any sort. On Tuesday, March 16, 2010 we convened a hearing and the parties presented their briefs and made their arguments about those two areas. I rendered a written decision on March 27, 2010. I also rendered an account, divided in half between the Employer and the CDC as was provided in the mediation/arbitration protocol.

Legal Issues

16. The issues that do and do not present themselves in this motion are as follows.

17. Local 1256 does not suggest that the appointment of myself as mediator/arbitrator while sitting as a Vice-Chair of the Board was improper. For various reasons, it has been common practice in the labour relations community since the 1960's. As far as I am aware, at no time has any party alleged bias as a result of a Vice-Chair having sat as arbitrator, even when the same parties appear at the Board.

18. Local 1256 does not suggest that anything I did in the course of acting as a mediator/arbitrator in any way disqualifies me from acting as a Vice-Chair of the Labour Relations Board in this case.

19. I did not receive any information that is in any way relevant to the issues or conduct of this case. Indeed, I received no information from or about Local 1256 other than its agreed upon wage rate, which I played no role in determining.

20. The relationship of a neutral adjudicator and the parties to the arbitration is not that of a lawyer and client. A mediator or adjudicator does not act as an advocate for one party or the other. Indeed the relationship between the CDC and the Employer was in essence an adversarial

one and I was acting as a neutral mediator/adjudicator, attempting to effect a compromise between the two or to settle the dispute over wages by arbitration.

21. The nature of this arbitration was an isolated event. It did not result in an ongoing relationship with the parties who appoint the mediator/arbitrator. The fact that an arbitrator has acted for two parties to resolve a dispute between them does not create a set of obligations similar to the "duty of loyalty" that a lawyer may owe to a former client: see *Chapters Inc. v. Davies, Ward and Beck LLP*, 2001 CanLII 24189 (ON C.A.), 52 O.R. (3rd) 566; *Labourers' International Union of North America, Local 183 v. Shell*, [2007] O.J. No. 471 and *Labourers' International Union of North America, Local 183 v. Ontario (Labour Relations Board)*, [2007] OLRB Rep. Mar/April 466; [2007] O.J. No. 1048. Quite simply that duty, which is a difficult one to define, is based on the role of the lawyer as advocate and the special relationship of lawyer and client. The role of an arbitrator is quite different.

22. The definition of a reasonable apprehension of bias as the criterion for disqualification of an adjudicator is still that expressed by de Grandpré J. in *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 SCR 369; 1976 CanLII 2 (S.C.C.) at p. 394:

... the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."

See more recently *Wewaykum Indian Band v. Canada*, 2003 SCC 45, [2003] 2 SCR 259, at paragraph 60.

23. An arbitrator acting pursuant to a collective agreement does not have any fixed term of appointment beyond the case on which he or she sits. Nonetheless, the position of arbitrator who has been appointed consensually has been seen as having a similar assurance of impartiality. In *C.U.P.E. v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539, 2003 SCC 29 the Supreme Court of Canada dealt with the nature of what constitutes independence and impartiality for arbitrators — in that case interest arbitrators determining the conditions of a renewal collective agreement for hospitals. In discussing those features it said:

It is now clear that the independence as well as the impartiality of the decision maker is a component of natural justice: *IWA v. Consolidated-Bathurst Packaging Ltd.*, 1990 CanLII 132 (S.C.C.), [1990] 1 S.C.R. 282, at p. 332, per Gonthier J.; *Matsqui Indian Band*, *supra*, at para. 79, per Lamer C.J.; and *R. v. Gagné*, 1992 CanLII 117 (S.C.C.), [1992] 1 S.C.R. 259, at pp. 283-84. As the purpose of the independence requirement is to establish a protected platform for impartial decision making, I will deal first with this objection.

(a) *Institutional Independence*

190. The *HLDAA* commands the use of *ad hoc* arbitration boards. The unions argue that such boards, in the context of “interest arbitrators”, are flawed because they lack the usual indices of institutional independence such as security of tenure, financial security and administrative independence that rest on “objective conditions or guarantees”: *Valente v. The Queen*, 1985 CanLII 25 (S.C.C.), [1985] 2 S.C.R. 673, at p. 689, and *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, 1997 CanLII 317 (S.C.C.), [1997] 3 S.C.R. 3, at para. 115. However, as explained above, the Court cannot substitute a different tribunal for the one designed by the legislature. An *ad hoc* tribunal is by definition constituted on a case-by-case basis. Security of tenure does not survive the termination of the arbitration, and financial security is similarly circumscribed. Administrative independence has little formal protection. Professional labour arbitrators (including those on the s.49(10) list) function successfully in such a structure even though there may be no guarantee of continuing work from any particular employer or union.

191. In addition to the *HLDAA*’s statutory command, the Court’s assessment of structural independence should take into account the success with which *ad hoc* tribunals have long operated in labour relations in general and under the *HLDAA*’s scheme of compulsory arbitrations (prior to the appointments in question) in particular: *Katz v. Vancouver Stock Exchange*, 1996 CanLII 177 (S.C.C.), [1996] 3 S.C.R. 405, at para. 1. In this regard, as mentioned, Professor Joseph Weiler testified that: “The independence and impartiality of arbitrators is guaranteed not by their remoteness, security of tenure, financial security or administrative security but by training, experience and mutual acceptability”.

24. I do not mean to overstate the relevance of that decision. It dealt with institutional independence and impartiality of arbitrators as a group and expressly left open the issue of an allegation that there might be a reasonable apprehension of bias brought against an individual on some specific ground. However, what was clear was that the mere act of acting as an arbitrator, and being paid by both sides for his or her work, does not make the arbitrator an advocate or representative of the parties to the arbitration nor does it give rise to any sort of reasonable apprehension of bias. As the Court, quoting Professor Weiler said:

“The independence and impartiality of arbitrators is guaranteed not by their remoteness, security of tenure, financial security or administrative security but by training, experience and mutual acceptability”.

25. Local 1256 does not suggest that there is some sort of ongoing relationship with the CDC and the EBA that would be seen by a reasonable person to raise a suspicion of bias. The relationship between the CDC and the Employer is such that they do not administer the collective agreement and hence have no ongoing arbitration work to which either of them would be a party. There is always another round of collective bargaining, although the likelihood of agreeing to forego a strike/lockout option in favour of arbitration is, in the abstract, less likely than more. Again, the Supreme Court in *CUPE v. Ontario (Minister of Labour)*, above, referred to what it described as “neutrality” in this context:

183. I accept as correct the Minister's February 2, 1998 statement that the *HLDA* process must be "perceive[d] . . . as neutral and credible". I also accept that neutrality, and the perception of neutrality, is bound up with an arbitrator's "training, experience and mutual acceptability" (as Professor Weiler testified).

26. As anyone in the field of labour relations knows, the perception that an arbitrator has fostered the interests of one party or group of parties over another is the death-knell to any reputation for impartiality or neutrality. Mutual acceptability is obtained and retained only by maintaining that reputation.

27. There is no reason to assume (absent any other fact) that the same degree of independence and neutrality will be lost simply because the individual has shifted from a role as mediator/arbitrator to that of a Vice-Chair. The perception that a Vice-Chair has fostered the interests of one party or group of parties over another would be fatal to that individual's acceptability as an arbitrator. The reality is that most Vice-Chairs who leave the Board seek to work as arbitrators. One does not have two reputations, one as an arbitrator and one as a Vice-Chair.

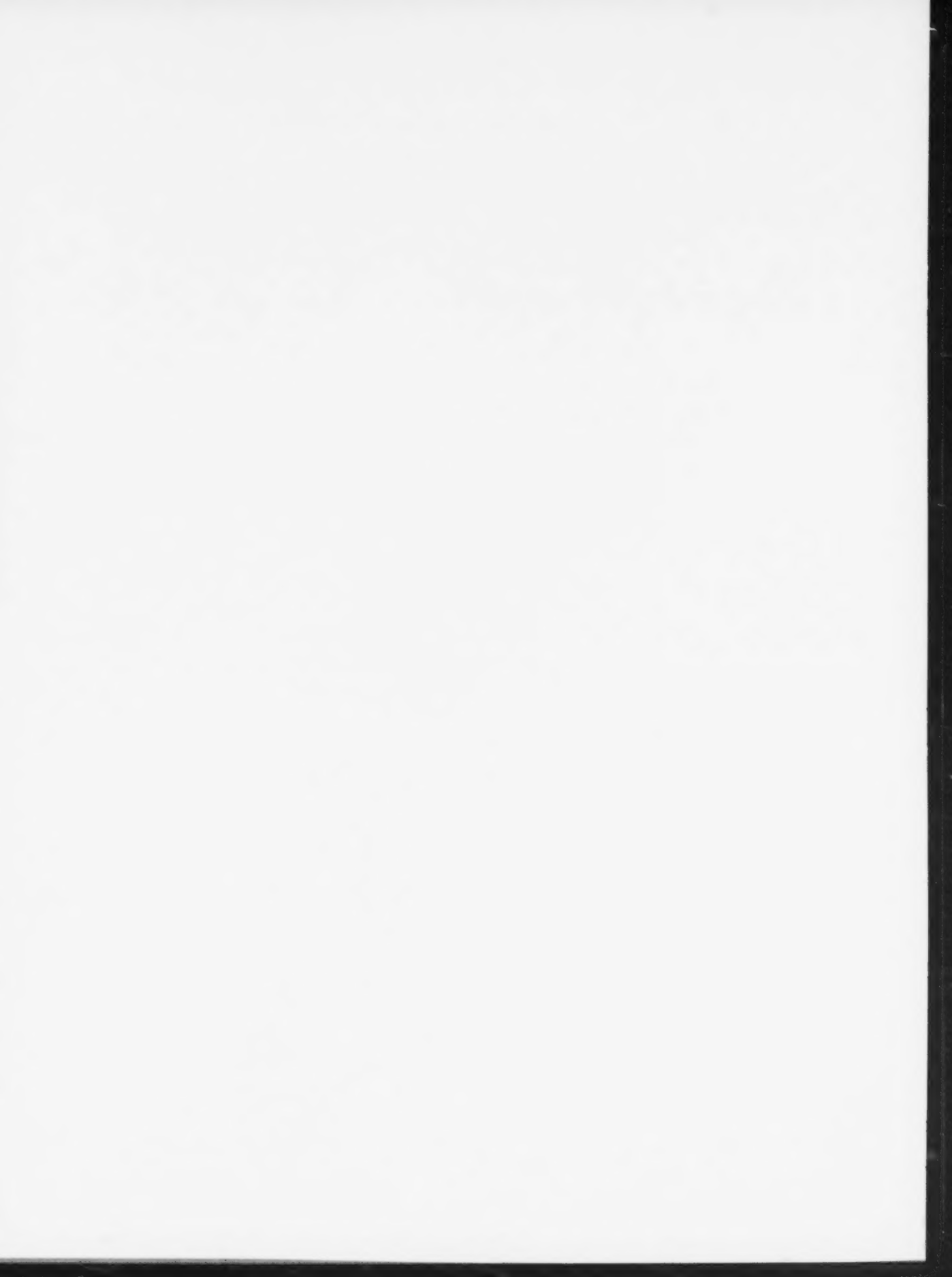
28. The degree of institutional impartiality and independence of the Board is well known and not challenged by Local 1256. Obviously it is possible to envision a situation in which the conduct of an individual brings that into question. However, it is difficult to see how a person acting as an independent adjudicator in a role that involves related but different parties and that requires neutrality and credibility somehow compromises his or her independence and neutrality as a Vice-Chair in this matter.

29. I conclude that a reasonable person, informed of all of the facts of the case, would not "viewing the matter realistically and practically" hold a reasonable apprehension of bias.

30. There is no reason to recuse myself. I refer this matter to the Registrar to set a date for a consultation.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING AUGUST 2010

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

1575-08-R: Canadian Construction Workers' Union (Applicant) v. Starland Contracting Inc. (Respondent)

Unit: "all construction labourers in the employ of Starland Contracting Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

1630-09-R: Labourers' International Union of North America, Ontario Provincial District Council (OPDC) (Applicant) v. BF Environmental Consultants Ltd. (Respondent)

Unit: "all construction labourers in the employ of BF Environmental Consultants Ltd. in all sectors of the construction industry in the County of Lambton excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

1801-09-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Taxis Contracting Ltd. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Taxis Contracting Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Taxis Contracting Ltd. in all sectors of the construction industry in the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (9 employees in unit)

2489-09-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Lake Dalrymple Contracting Ltd. and LDC Concrete Pumping Ltd. (Respondent)

Unit: "all construction labourers, carpenters, carpenters' apprentices, and teamsters engaged in on-site construction work in the employ of Lake Dalrymple Contracting Ltd. and LDC Concrete Pumping Ltd. in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, in the County of Peterborough (except for the geographic Township of Cavan), the County of Victoria (except for the geographic Township of Manvers) and the provisional County of Haliburton, and in the County of Simcoe and the District Municipality of Muskoka, in all sectors of the construction industry other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (26 employees in unit)

3598-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Consolidated Drilling and Blasting Inc. (Respondent)

Unit: "all construction labourers in the employ of Consolidated Drilling and Blasting Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

0185-10-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. JC Concrete Forming Inc. (Respondent)

Unit: "all construction labourers in the employ of JC Concrete Forming Inc. in all sectors of the construction industry in the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township), in all sectors of the construction industry, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

0214-10-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Sunshine Painter Contractor (a Division of Elna Painting Inc.) (Respondent)

Unit: "all painters and painters' apprentices in the employ of Sunshine Painter Contractor (a Division of Elna Painting Inc.) in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painters' apprentices in the employ of Sunshine Painter Contractor (a Division of Elna Painting Inc.) in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

0274-10-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. Top - All Plumbing & Heating Contractors Ltd. (Respondent)

Unit: "all plumbers and plumbers' apprentices and all steamfitters and steamfitters' apprentices in the employ of Top - All Heating and Plumbing Contractors Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers and plumbers' apprentices and all steamfitters and steamfitters' apprentices in the employ of Top - All Heating and Plumbing Contractors Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

1409-10-R: Canadian Construction Workers' Union (Applicant) v. Green Valley Restoration, Interlocking & Paving Inc. (Respondent)

Unit: "all construction labourers, carpenters and carpenters' apprentices, employees engaged in the operation of cranes, shovels, bulldozers or similar equipment and those engaged in repairing and maintaining of same, and employees engaged as surveyors, in the employ of the responding party in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, in all sectors of the construction industry, save and except non-working foremen and persons above the rank of non-working foreman" (10 employees in unit)

1485-10-R: Labourers' International Union of North America, Local 1059 (Applicant) v. London Paving and Concrete Ltd. (Respondent)

Unit: "all construction labourers in the employ of London Paving and Concrete Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman all construction labourers in the employ of London Paving and Concrete Ltd. in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

1508-10-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Superior Air Systems Ltd. (Respondent)

Unit: "all refrigeration and air conditioning mechanics and refrigeration and air conditioning mechanics' apprentices in the employ of Superior Air Systems Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all refrigeration and air conditioning mechanics and refrigeration and air conditioning mechanics' apprentices in the employ of Superior Air Systems Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

1514-10-R: International Association of Heat and Frost Insulators and Allied Workers, Local 95 (Applicant) v. Ontario Corporation 2238507 c.o.b. as Lambton-Kent Insulation (Samia) Ltd. (Respondent)

Unit: "all journeymen and apprentice insulators and asbestos workers in the employ of Ontario Corporation 2238507 c.o.b. as Lambton-Kent Insulation (Samia) Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all journeymen and apprentice insulators and asbestos workers in the employ of Ontario Corporation 2238507 c.o.b. as Lambton-Kent Insulation (Samia) Ltd. in all sectors of the construction industry in the Counties of Essex and Kent, the County of Lambton and the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

1537-10-R: Construction Workers Local 52 affiliated with the Christian Labour Association of Canada (Applicant) v. Universal Fire Systems Inc. (Respondent)

Unit: "all labourers in the employ of Universal Fire Systems Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

1564-10-R: International Union of Painters and Allied Trades, Local 1904 (Applicant) v. Mobile Glass & Framing Inc. (Respondent)

Unit: "all journeymen and apprentice glaziers and metal mechanics in the employ of Mobile Glass & Framing Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice glaziers and metal mechanics in the employ of Mobile Glass & Framing Inc. in all sectors of the construction industry in that portion of the District of Algoma south of the 49th parallel of latitude, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

1573-10-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. LC Drilling Rock Services Ltd. (Respondent)

Unit: "all construction labourers in the employ of LC Drilling Rock Services Ltd. in all sectors of the construction industry in the District of Thunder Bay, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

1592-10-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Sunrae Construction Ltd. (Respondent)

Unit: "all construction labourers, all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors, and all teamsters engaged in on-site construction in the employ of Sunrae Construction Ltd. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

1617-10-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Brad Cole Underground Construction Limited (Respondent)

Unit: "all construction labourers in the employ of Brad Cole Underground Construction Limited in all sectors of the construction industry in the Counties of Essex and Kent and the County of Lambton, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

1709-10-R: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. JC Concrete Forming Inc. (Respondent)

Unit: "all construction labourers, carpenters and carpenters' apprentices and rodmen and rodmen's apprentices in the employ of JC Concrete Forming Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

Bargaining Agents Certified Subsequent to Vote

1165-10-R: Service Employees International Union Local 1 Canada (Applicant) v. Yee Hong Centre for Geriatric Care (Markham Centre) (Respondent)

Unit: "all Nursing employees at Yee Hong Centre for Geriatric Care (Markham Centre) in the City of Markham, save and except supervisors, persons above the rank of supervisor, office and clerical, dietary, housekeeping, laundry, maintenance, activity, social workers and chaplain" (130 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	130
Number of persons who cast ballots	160
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	90
Number of segregated ballots cast by persons whose names appear on voter's list	69
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	96
Number of ballots marked against applicant	16
Number of ballots segregated and not counted	48

1215-10-R: Power Workers' Union, CUPE Local 1000-C.L.C. (Applicant) v. Bruce Power LP (Respondent) v. International Association of Machinists and Aerospace Workers (Intervener)

Unit: "all Machinists, Machinist Welders, Machinist Millwright-Turbine Erectors, Equipment Repair Machinists, Drill Doctors, Conveyor Mechanic, Machinist Helpers, Machinist Apprentices and Auto and Diesel Mechanics and Auto and Diesel Mechanic Apprentices employed by Bruce Power LP, save and except persons above the rank of subforeman" (9 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	8
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	4
Number of ballots marked in favour of applicant	4
Number of ballots marked in favour of intervener	0
Number of ballots segregated and not counted	4

1279-10-R: UNITE HERE Local 75 (Applicant) v. Aramark Canada Limited, Scarborough Campus, University of Toronto (Respondent) v. Workers United Ontario Council (Intervener)

Unit: "all employees of Aramark Canada Limited employed at the Scarborough Campus of the University of Toronto, 1265 Military Trail, Toronto, ON M1C 1A4, save and except supervisors, persons above the rank of supervisor, executive chef, office and clerical staff" (47 employees in unit)

Number of names of persons on revised voters' list	47
Number of persons who cast ballots	34
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	34
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	26
Number of ballots marked in favour of intervener	1
Number of ballots marked in favour of second intervener	6
Number of ballots segregated and not counted	0

1391-10-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Sudbury Sexual Assault Crisis Centre (Respondent)

Unit: "all employees of Sudbury Sexual Assault Crisis Centre in the Greater City of Sudbury, save and except directors, persons above the rank of director, bookkeepers and students" (3 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0

Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1393-10-R: United Food and Commercial Workers Union, Local 333 (Applicant) v. Federal Security Agency Corporation (Respondent)

Unit: "all employees of Federal Security Agency Corporation at 2000 Boundary Road, Whitby, Ontario, save and except supervisors and persons above the rank of supervisor" (8 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	0
Number of ballots marked in favour of intervener	2
Number of ballots segregated and not counted	0

1419-10-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Economy Paving Company (St. Catharines) Limited (Respondent) v. Economy Paving Company Associated Membership (Intervener)

Unit: "all construction labourers, all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors and all truck drivers engaged in on-site construction in all sectors of the construction industry in the Province of Ontario excluding the ICI sector of the construction industry, save and except non-working forepersons and those above the rank of non-working foreperson" (12 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	10
Number of ballots marked in favour of intervener	4
Number of ballots segregated and not counted	0

1433-10-R: United Food and Commercial Workers International Union Local 333 (Applicant) v. Federal Security Agency Corporation (Respondent)

Unit: "all employees of the Federal Security Agency Corporation at LCBO Warehouse, 955 Wilton Grove, London, Ontario, save and except supervisors, persons above the rank of supervisor" (5 employees in unit) (*Having regard to the agreement of the parties.*)

1476-10-R: Service Employees International Union Local 2, Brewery General and Professional Workers' Union (Applicant) v. Wynford Services (Respondent)

Unit: "all employees of Wynford Services working at 277 Gladstone Avenue in the City of Toronto save and except supervisors and persons above the rank of supervisor." (4 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	0

1496-10-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Metro (Windsor) Enterprises Inc. (Respondent) v. Teamsters, Chauffeurs, Warehousemen and Helpers Union Local #879 (Intervener)

Unit: "all employees of Metro (Windsor) Enterprises Inc. employed at Windsor, Ontario, and all other locations within the County of Essex, and on the company payroll. For further clarification, the term "employee" shall be deemed to be mean all employees of the Company save and except supervisory personnel, office personnel, and those not regularly employed for twenty-five (25) hours or more per week and students employed during vacation periods" (8 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	7

1497-10-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Metro (Windsor) Enterprises Inc. (Respondent) v. Teamsters, Chauffeurs, Warehousemen and Helpers Union Local #879 (Intervener)

Unit: "all employees of Metro (Windsor) Enterprises Inc. employed at Windsor, Ontario, and all other locations within the County of Essex, and on the company payroll. For further clarification, the term "employee" shall be deemed to be all employees of the Company save and except supervisory personnel, those above the rank of supervisory personnel, office personnel and students employed during vacation periods" (8 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on	0

voters' list	
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6

1498-10-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Metro (Windsor) Enterprises Inc. (Respondent) v. Teamsters, Chauffeurs, Warehousemen and Helpers Union Local #879 (Intervener)

Unit: "all employees of Metro (Windsor) Enterprises Inc. employed at Windsor, Ontario, and all other locations within the County of Essex, and on the company payroll. For further clarification, the term "employee" shall be deemed to be all employees of the Company save and except supervisory personnel, those above the rank of supervisory personnel, office personnel, temporary help, casual help and students" (26 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	24
Number of persons who cast ballots	23
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	22
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	22
Number of ballots marked in favour of intervener	1

1538-10-R: Elementary Teachers' Federation of Ontario (Applicant) v. Hamilton-Wentworth District School Board (Respondent)

Unit: "all designated early childhood educators in the employ of the Hamilton-Wentworth District School Board, save and except supervisors and persons above the rank of supervisor" (51 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	45
Number of persons who cast ballots	29
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	29
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	29
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1563-10-R: United Food and Commercial Workers Union, Local 1977 (Applicant) v. Cobblestone Gardens Ltd. (Respondent)

Unit: "all employees of Cobblestone Gardens Ltd. in the Municipality of Niagara, save and except the Administrator, the Director of Care, the Administrative Assistant, and those above the rank of Director of Care, and those employed in a confidential capacity in relation to Labour Relations" (27 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	27
Number of persons who cast ballots	27

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	23
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	19
Number of ballots marked against applicant	7
Number of ballots segregated and not counted	1

1587-10-R: Service Employees International Union Local 1 Canada (Applicant) v. Collingwood Nursing Home Limited (Respondent)

Unit: "all employees of Collingwood Nursing Home Limited in the City of Collingwood save and except supervisor, persons above the rank of supervisor, registered nurses and office and clerical" (40 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	41
Number of persons who cast ballots	40
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	37
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	27
Number of ballots marked in favour of intervener	12
Number of ballots segregated and not counted	1

1613-10-R: Elementary Teachers' Federation of Ontario (Applicant) v. Toronto Catholic District School Board (Respondent) v. Canadian Union of Public Employees (Intervener)

Unit: "all employees employed as designated Early Childhood Educators (as defined by the Education Act) on a regular basis (not including Occasional designated Early Childhood Educators) in the Early Learning Program at the Toronto Catholic District School Board in the City of Toronto save and except supervisors and persons above the rank of supervisor and those persons already represented by a trade union" (61 employees in unit)

1634-10-R: UFCW Canada Local 1000A (Applicant) v. Richtree Market Restaurants Inc. (Respondent)

Unit: "all employees of Richtree Market Restaurants Inc., located at the Rideau Centre, 50 Rideau Street, Level 1, Ottawa, Ontario save and except the general manager, restaurant manager, assistant general manager, persons above the rank of assistant manager, co-op students, and any persons part of any developmental work program" (52 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	52
Number of persons who cast ballots	44
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	43
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	33
Number of ballots marked against applicant	10

Applications for Certification Dismissed Without Vote

3206-09-R; 3209-09-R; 3210-09-R; 3225-09-R; 3226-09-R; 3227-09-R; 3228-09-R; 3283-09-R; 3283-09-R; 3284-09-R; 3287-09-R; 3304-09-R: Brick and Allied Craft Union of Canada (Applicant) v. Bernel Masonry Limited (Respondent); Brick and Allied Craft Union of Canada (Applicant) v. Linar Masonry Inc. (Respondent); Brick and Allied Craft Union of Canada (Applicant) v. Vaughan Masonry Inc. (Respondent); Brick and Allied Craft Union of Canada (Applicant) v. Stefcon Construction Inc. (Respondent); Brick and Allied Craft Union of Canada (Applicant) v. Squire Masonry Ltd. (Respondent); Brick and Allied Craft Union of Canada (Applicant) v. Canex Masonry Ltd. (Respondent); Brick and Allied Craft Union of Canada (Applicant) v. BMC Masonry o/a 2032686 Ontario Ltd. (Respondent); Brick and Allied Craft Union of Canada (Applicant) v. FMBOT Contracting Ltd. (Respondent);

1495-10-R: Construction Workers Local 53, affiliated with Christian Labour Association of Canada (CLAC) (Applicant) v. Iacobelli Construction Limited (Respondent)

Applications for Certification Dismissed Subsequent to Vote

2300-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Tritan Inc. (Respondent)

Unit: "all construction labourers in the employ of the responding party in the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, in all sectors of the construction industry other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	0

2419-09-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Robert Gates c.o.b. as Peterborough Drywall (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of the responding party in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all carpenters and carpenters' apprentices in the employ of the responding party in all other sectors of the construction industry in the County of Peterborough (except for the geographic Township of Cavan), the County of Victoria (except for the geographic Township of Manvers) and the provisional County of Haliburton, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in unit)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	0

Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	7
Number of ballots segregated and not counted	0

2423-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Corcon Wall Forming Inc. (Respondent)

Unit: "all construction labourers in the employ of the responding party in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and in all other sectors of the construction industry, excluding the industrial, commercial and institutional sectors, in the County of Peterborough (except for the geographic Township of Cavan), the County of Victoria (except for the geographic Township of Manvers) and the provisional County of Haliburton, save and except non-working foremen and those above the rank of non-working foreman." (7 employees in unit)

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	0

3279-09-R: Brick and Allied Craft Union of Canada (Applicant) v. Metric Tile Ltd. (Respondent) v. Brick and Allied Craft Union of Canada, Brick and Allied Craft Union of Canada, Local 31, Terrazzo, Tile & Marble Guild Of Ontario, Inc. (Intervenors)

Unit: "all marble, tile and terrazzo mechanics, helpers, apprentices, improvers, tile setters, pieceworkers, and working foremen in the employ of the responding party in the residential sector of the construction industry in the following geographic areas: a) The City of Toronto and the District within approximately thirty (30) miles of the City Limit, including the following: Oakville, Brampton, Newmarket, Oshawa, including the counties of Simcoe, Peel, York, Ontario, Durham, Victoria, Peterborough, Northumberland and all districts in between the above places. All territories east of Sixteen Mile Creek from the Lakeshore to the Queen Elizabeth Highway. Also, the territorial line east of the Sixth Line, north of the Queen Elizabeth Highway in the County of Halton. b) The County of Wentworth, County of Halton, except that portion east of Sixteen Mile Creek from the Lakeshore to the Queen Elizabeth Highway and that portion east of Sixth Line, north of the Queen Elizabeth Highway, Townships of North and South Grimsby, Caiston in the County of Lincoln, County of Haldimand except the Townships of Moulton and Dunn, save and except persons who are covered by a subsisting collective agreement between the responding party and the Labourers' International Union of North America, Local 183. For purposes of clarity, the voting constituency encompasses only the high rise portion of the residential sector of the construction industry." (32 employees in unit) (*Clarity Note*)

Number of names of persons on revised voters' list	0
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0

Number of spoiled ballots	0
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	0
Number of ballots marked in favour of intervener	3
Number of ballots segregated and not counted	0

3282-09-R: Brick and Allied Craft Union of Canada (Applicant) v. Rockford Tile Contractors (1996) Ltd. (Respondent) v. Brick and Allied Craft Union of Canada, Brick and Allied Craft Union of Canada, Local 31, Terrazzo, Tile & Marble Guild of Ontario Inc. (Interveners)

Unit: "all marble, tile and terrazzo mechanics, helpers, apprentices, improvers, tile setters, pieceworkers, and working foremen in the employ of the responding party in the residential sector of the construction industry in the following geographic areas: a) The City of Toronto and the District within approximately thirty (30) miles of the City Limit, including the following: Oakville, Brampton, Newmarket, Oshawa, including the counties of Simcoe, Peel, York, Ontario, Durham, Victoria, Peterborough, Northumberland and all districts in between the above places. All territories east of Sixteen Mile Creek from the Lakeshore to the Queen Elizabeth Highway. Also, the territorial line east of the Sixth Line, north of the Queen Elizabeth Highway in the County of Halton. b) The County of Wentworth, County of Halton, except that portion east of Sixteen Mile Creek from the Lakeshore to the Queen Elizabeth Highway and that portion east of Sixth Line, north of the Queen Elizabeth Highway, Townships of North and South Grimsby, Caiston in the County of Lincoln, County of Haldimand except the Townships of Moulton and Dunn, save and except persons who are covered by a subsisting collective agreement between the responding party and the Labourers' International Union of North America, Local 183. For purposes of clarity, the voting constituency encompasses only the high rise portion of the residential sector of the construction industry." (10 employees in unit)

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	0

3283-09-R: Brick and Allied Craft Union of Canada (Applicant) v. Gem Campbell Terrazzo Tile Inc. (Respondent) v. Brick and Allied Craft Union of Canada, Brick and Allied Craft Union of Canada, Local 31, Terrazzo, Tile & Marble Guild of Ontario Inc. (Interveners)

Unit: "all marble, tile and terrazzo mechanics, helpers, apprentices, improvers, tile setters, pieceworkers, and working foremen in the employ of the responding party in the residential sector of the construction industry in the following geographic areas: a) The City of Toronto and the District within approximately thirty (30) miles of the City Limit, including the following: Oakville, Brampton, Newmarket, Oshawa, including the counties of Simcoe, Peel, York, Ontario, Durham, Victoria, Peterborough, Northumberland and all districts in between the above places. All territories east of Sixteen Mile Creek from the Lakeshore to the Queen Elizabeth Highway. Also, the territorial line east of the Sixth Line, north of the Queen Elizabeth Highway in the County of Halton. b) The County of Wentworth, County of Halton, except that portion east of Sixteen Mile Creek from the Lakeshore to the Queen Elizabeth Highway and that portion east of Sixth Line, north of the Queen Elizabeth Highway, Townships of North and South Grimsby, Caiston in the County of Lincoln, County of Haldimand except the Townships of Moulton and Dunn, save and except persons who are covered by a subsisting collective agreement between the responding party and the Labourers' International Union of North America, Local 183. For purposes of clarity, the voting constituency encompasses only the high rise portion of the residential sector of the construction industry." (7 employees in unit) (*Clarity Note*)

3284-09-R: Brick and Allied Craft Union of Canada (Applicant) v. Moscone Tile Ltd. (Respondent) v. Brick and Allied Craft Union of Canada, Brick and Allied Craft Union of Canada, Local 31, Terrazzo, Tile & Marble Guild of Ontario Inc. (Intervenors)

Unit: "all marble, tile and terrazzo mechanics, helpers, apprentices, improvers, tile setters, pieceworkers, and working foremen in the employ of the responding party in the residential sector of the construction industry in the following geographic areas: a) The City of Toronto and the District within approximately thirty (30) miles of the City Limit, including the following: Oakville, Brampton, Newmarket, Oshawa, including the counties of Simcoe, Peel, York, Ontario, Durham, Victoria, Peterborough, Northumberland and all districts in between the above places. All territories east of Sixteen Mile Creek from the Lakeshore to the Queen Elizabeth Highway. Also, the territorial line east of the Sixth Line, north of the Queen Elizabeth Highway in the County of Halton. b) The County of Wentworth, County of Halton, except that portion east of Sixteen Mile Creek from the Lakeshore to the Queen Elizabeth Highway and that portion east of Sixth Line, north of the Queen Elizabeth Highway, Townships of North and South Grimsby, Caiston in the County of Lincoln, County of Haldimand except the Townships of Moulton and Dunn, save and except persons who are covered by a subsisting collective agreement between the responding party and the Labourers' International Union of North America, Local 183. For purposes of clarity, the voting constituency encompasses only the high rise portion of the residential sector of the construction industry." (17 employees in unit)

Number of names of persons on revised voters' list	17
Number of persons who cast ballots	16
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	5
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	16
Number of ballots segregated and not counted	0

3287-09-R: Brick and Allied Craft Union of Canada (Applicant) v. Premier Contractors Ltd. (Respondent) v. Brick and Allied Craft Union of Canada, Brick and Allied Craft Union of Canada, Local 31, Terrazzo, Tile & Marble Guild of Ontario, Inc. (Intervenors)

Unit: "all marble, tile and terrazzo mechanics, helpers, apprentices, improvers, tile setters, pieceworkers, and working foremen in the employ of the responding party in the residential sector of the construction industry in the following geographic areas: a) The City of Toronto and the District within approximately thirty (30) miles of the City Limit, including the following: Oakville, Brampton, Newmarket, Oshawa, including the counties of Simcoe, Peel, York, Ontario, Durham, Victoria, Peterborough, Northumberland and all districts in between the above places. All territories east of Sixteen Mile Creek from the Lakeshore to the Queen Elizabeth Highway. Also, the territorial line east of the Sixth Line, north of the Queen Elizabeth Highway in the County of Halton. b) The County of Wentworth, County of Halton, except that portion east of Sixteen Mile Creek from the Lakeshore to the Queen Elizabeth Highway and that portion east of Sixth Line, north of the Queen Elizabeth Highway, Townships of North and South Grimsby, Caiston in the County of Lincoln, County of Haldimand except the Townships of Moulton and Dunn, save and except persons who are covered by a subsisting collective agreement between the responding party and the Labourers' International Union of North America, Local 183. For purposes of clarity, the voting constituency encompasses only the high rise portion of the residential sector of the construction industry." (3 employees in unit) (*Clarity Note*)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0

Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	0

3304-09-R: Brick and Allied Craft Union of Canada (Applicant) v. Sterling Tile & Carpet (Respondent) v. Brick and Allied Craft Union of Canada/Brick and Allied Craft Union of Canada, Local 31 (Intervener)

Unit: "all marble, tile and terrazzo mechanics, helpers, apprentices, improvers, tile setters, pieceworkers, and working foremen in the employ of the employer in the residential sector of the construction industry, in the following geographic areas: a) The City of Toronto and the District within approximately thirty (30) miles of the City Limit, including the following: Oakville, Brampton, Newmarket, Oshawa, including the counties of Simcoe, Peel, York, Ontario, Durham, Victoria, Peterborough, Northumberland and all districts in between the above places. All territories East of the Sixteen Mile Creek from the Lakeshore to the Queen Elizabeth Highway. Also, the territorial line East of the Sixth Line, north of the Queen Elizabeth Highway in the County of Halton; b) The County of Wentworth, County of Halton, except that portion East of Sixteen Mile Creek from the Lakeshore to the Queen Elizabeth Highway and that portion East of Sixth Line, north of the Queen Elizabeth Highway, Townships of North and South Grimsby, Caiston in the County of Lincoln, County of Haldimand, except the Townships of Moulton and Dunn, save and except persons who are covered by a subsisting collective agreement between the employer and the Labourers' International Union of North America, Local 183. Clarity Note: This is an application for the high rise portion of the residential sector of the construction industry only. Labourers' International Union of North America, Local 183 represents employees of the employer in the low rise portion of the residential sector of the construction industry (i.e. non-elevated housing of not more than three (3) storeys in height)." (74 employees in unit) (*Clarity Note*)

Number of names of persons on revised voters' list	74
Number of persons who cast ballots	98
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	98
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	96
Number of ballots segregated and not counted	0

0375-10-R: Ontario Public Service Employees Union (Applicant) v. Trellis Mental Health and Developmental Services (Respondent)

Unit: "all employees employed by Trellis Mental Health and Developmental Services in the cities of Guelph and Kitchener and the Township of Fergus, Mount Forest and Orangeville; save and except supervisors, persons above the rank of supervisor, office and clerical staff, and Special Services at Home (SSAH) workers." (80 employees in unit)

Number of names of persons on revised voters' list	101
Number of persons who cast ballots	101
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	68
Number of segregated ballots cast by persons whose names appear on voter's list	37
Number of segregated ballots cast by persons whose names do not appear on voters' list	14
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	44

Number of ballots marked against applicant	57
Number of ballots segregated and not counted	0

0605-10-R: Workers United Ontario Council (Applicant) v. Nordic Gaming Corporation (Respondent) v. UNITE HERE (Intervener)

Unit: "all employees of the Employer at its kitchens, cafeterias, restaurant and food stands and all food and beverage staff at Fort Erie Racetrack save and except Assistant Managers, persons above the rank of Assistant Manager, Kitchen Chefs, Office Staff, Doormen, and persons now represented by other bargaining agents" (95 employees in unit)

Number of names of persons on revised voters' list	92
Number of persons who cast ballots	55
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	53
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	25
Number of ballots marked in favour of intervener	28
Number of ballots segregated and not counted	2

1287-10-R: Teamsters Local Union No. 879 (Applicant) v. Synnex Canada Inc. (Respondent)

Unit: "all employees of SYNEX Canada Ltd. in the City of Guelph save and except Supervisors, persons above the rank of Supervisor, office and clerical staff, sales staff, and those employed through temporary agencies." (202 employees in unit) (*Clarity: Note*)

1293-10-R: Workers United Ontario Council (Applicant) v. Aramark Canada Ltd. (Respondent) v. UNITE HERE Ontario Council and its Local 2742, UNITE HERE Local 75 (Interveners)

Unit: "all employees of ARAMARK Canada Limited employed at the Scarborough Campus of the University of Toronto, 1265 Military Trail, Toronto, ON M1C 1A4, save and except supervisors, persons above the rank of supervisor, executive chef, office and clerical staff." (49 employees in unit)

Number of names of persons on revised voters' list	47
Number of persons who cast ballots	34
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	34
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	26
Number of ballots marked in favour of intervener	1
Number of ballots marked in favour of second intervener	6
Number of ballots segregated and not counted	0

1370-10-R: Service Employees International Union Local 2 Brewery, General & Professional Workers' Union (Applicant) v. Cleanmatters Janitorial Services Ltd (Respondent)

Unit: "all employees of Cleanmatters Janitorial Services Ltd. working at 335 River Road, in the City of Ottawa, Ontario, save and except supervisors and those above the rank of supervisor" (7 employees in unit)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	0

1437-10-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Bee-Clean Building Maintenance (Respondent)

Unit: "all employees of Bee-Clean Building Maintenance employed at 25 and 75 Watline Avenue, in the City of Mississauga, Ontario, save and except supervisors and persons above the rank of supervisor, office and clerical staff." (7 employees in unit)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	1

1575-10-R: Canadian Union of Public Employees (Applicant) v. Toronto Catholic District School Board (Respondent) v. Elementary Teachers' Federation of Ontario (Intervener)

Unit: "all employees employed as designated Early Childhood Educators (as defined by the Education Act) on a regular basis (not including Occasional designated Early Childhood Educators) in the Early Learning Program at the Toronto Catholic District School Board in the City of Toronto save and except supervisors and persons above the rank of supervisor and those persons already represented by a trade union." (63 employees in unit)

Number of names of persons on revised voters' list	63
Number of persons who cast ballots	50
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	45
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	5
Number of spoiled ballots	0
Number of ballots segregated and not counted	3

Applications for Certification Withdrawn

1377-09-R: United Brotherhood of Carpenters and Joiners of America, Local 1256 (Applicant) v. Cope Construction & Contracting Inc. (Respondent) v. Labourers' International Union of North America, Ontario Provincial District Council, International Union of Operating Engineers, Local 793 (Intervenors)

1989-09-R: Teamsters Local Union 847, AFL-CIO-CLC (Applicant) v. ABC Studios, Walt Disney Productions, Raleigh Studios, Stage 49 Ltd. (Respondents) v. International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada Local 873, Directors Guild of Canada (Ontario), Canadian Film & Television Production Association (Interveners)

2711-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Economy Paving Company (St. Catharines) Limited (Respondent) v. Economy Paving Company Associated Membership (Intervener)

3185-09-R: Labourers' International Union of North America, Local 625 (Applicant) v. Graham Construction and Engineering Inc. (Respondent) v. Construction Workers Local 52, affiliated with Christian Labour Association of Canada, Jasper Constructors Ltd. (Interveners)

0027-10-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Logistics Insight Corporation (LINC Ontario Ltd.) (Respondent)

0486-10-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Janick Electric Limited (Respondent)

0957-10-R: United Brotherhood of Carpenters and Joiners of America, Local 1669 (Applicant) v. Morris Modular Space Inc. and/or, 534209 Ontario Limited o/a "C.S. Enterprises" (Respondents)

1434-10-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. 2107890 Ontario Inc. c.o.b. as Promenade Senior Suites (Respondent)

1507-10-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Superior Air Systems Ltd. (Respondent)

1589-10-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. UNFI Canada, Inc. (Respondent)

APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

3374-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Tribury Construction (1995) Inc., Tribury Interclaim & Restoration Services Ltd., Tribury Construction Holdings Inc. and, Tribury Construction Ltd. (Respondents) (*Withdrawn*)

0529-10-R: Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America, On its own behalf and on behalf of its constituent trade unions, including Local 27 (Applicant) v. Diamond Bros. Carpentry Ltd., G & P Millwork Ltd. (Respondents) (*Withdrawn*)

1038-10-R: International Union of Operating Engineers Local 793 (Applicant) v. STG Construction Ltd. and, SEBCO Contracting Ltd. (Respondents) (*Granted*)

1050-10-R: Universal Workers' Union, Labourers' International Union of North America, Local 183 (Applicant) v. STG Construction Ltd. and, SEBCO Contracting Ltd. (Respondents) (*Granted*)

1301-10-R: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 6665268 Canada Inc. o/a Absolute Installations and Prim Renovations Inc. (Respondent) (*Granted*)

1451-10-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. 1528590 Ontario Limited o/a Sarnia Cement Services and, Raymond Duguay, a Sole Proprietor, c.o.b. as Duguay Construction (Respondents) (*Withdrawn*)

SALE OF A BUSINESS

3374-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Tribury Construction (1995) Inc., Tribury Interclaim & Restoration Services Ltd., Tribury Construction Holdings Inc. and, Tribury Construction Ltd. (Respondents) (*Withdrawn*)

0529-10-R: Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America, On its own behalf and on behalf of its constituent trade unions, including Local 27 (Applicant) v. Diamond Bros. Carpentry Ltd., G & P Millwork Ltd. (Respondents) (*Withdrawn*)

1038-10-R: International Union of Operating Engineers Local 793 (Applicant) v. STG Construction Ltd. and, SEBCO Contracting Ltd. (Respondents) (*Granted*)

1050-10-R: Universal Workers' Union, Labourers' International Union of North America, Local 183 (Applicant) v. STG Construction Ltd. and, SEBCO Contracting Ltd. (Respondents) (*Granted*)

1301-10-R: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 6665268 Canada Inc. o/a Absolute Installations and Prim Renovations Inc. (Respondent) (*Granted*)

1451-10-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. 1528590 Ontario Limited o/a Sarnia Cement Services and, Raymond Duguay, a Sole Proprietor, c.o.b. as Duguay Construction (Respondents) (*Withdrawn*)

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

3219-09-R: Glynn Sayeau (Applicant) v. International Brotherhood of Electrical Workers, Local 115 (Respondent) v. Terry Shortt Electrical Services Ltd., International Brotherhood of Electrical Workers and the IBEW Construction Council of Ontario and all their affiliated bargaining agents listed in Appendix "A" (Interveners) (*Granted*)

Unit: "all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of Terry Shortt Electrical Services Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman" (1 employee in unit)

3828-09-R: Dave Schellenberg, et al (Applicant) v. International Brotherhood of Electrical Workers, I.B.E.W. Construction Council of Ontario, and, I.B.E.W. Local 105, I.B.E.W. Local 115, I.B.E.W. Local 120, I.B.E.W. Local 303, I.B.E.W. Local 353, I.B.E.W. Local 402, I.B.E.W. Local 530, I.B.E.W. Local 586, I.B.E.W. Local 773, I.B.E.W. Local 804, I.B.E.W. Local 894, I.B.E.W. Local 1687 and, I.B.E.W. Local 1739 (Respondents) v. Ecco Electric Limited (Intervener) (*Granted*)

Unit: "all foremen, journeyman wiremen, instrumentation electricians, apprentices, pre-apprentices, journeyman linemen, (powerline technician)-splicers, apprentice linemen-splicers, groundman/equipment operators, groundman/drivers, groundmen, utilitymen, foresters, communication electricians, journeymen and apprentice network cabling specialists/communication technicians and communication cable installers performing work within the acknowledged jurisdiction of the union, as defined in section 151(2) of the OLRA, employed by Ecco Electric Inc. in the Province of Ontario in the ICI sector of the construction industry." (14 employees in unit) (*Clarity Note*)

Number of names of persons on revised voters' list	16
Number of persons who cast ballots	16
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14

Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	6
Number of ballots marked against respondent	10
Number of ballots segregated and not counted	0

3980-09-R: Bruno Santos (Applicant) v. International Union of Operating Engineers, Local 793 (Respondent) v. Gedco Excavating Limited (Intervener) (*Granted*)

Unit: "all employees engaged in the operation of cranes, shovels, bulldozers, and similar equipment, and those primarily engaged in the repairing and maintaining of the same and employees engaged as surveyors, in all sectors of the construction industry in the Province of Ontario and engaged in any such work outside the construction industry in the said Province." (3 employees in unit)

0083-10-R: Dave Berger (Applicant) v. International Brotherhood of Electrical Workers, Local Union 120 (Respondent) v. E.C.M. Controls Inc. (Intervener) (*Granted*)

Unit: "all journeymen electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of the E.C.M. Controls Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and in all other sectors of construction industry in OLRB Geographic Area 3, save and except non-working foreman and persons above the rank of non-working foreman." (3 employees in unit)

0151-10-R: David Morley (Applicant) v. Labourers' International Union of North America, Ontario Provincial District Council (Respondent) (*Dismissed*)

Unit: "all construction labourers, including masons' or bricklayers' tenders, plasterers and plasterers' apprentices, and all employees engaged in cement finishing, waterproofing or restoration work in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario" (1 employee in unit)

0241-10-R: Mark Douglas Jones (Applicant) v. Universal Workers Union, Labourers' International Union of North America, Local 183 (Respondent) v. Yorkwood Homes (Intervener) (*Granted*)

Unit: "all construction employees engaged in the on-site construction of all types of low-rise housing and their natural amenities up to the date of closing or date of occupancy, which ever occurs first, of said housing or part thereof while working in the County of Simcoe and in O.L.R.B. Geographic Area No. 8, namely the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, and such other geographic areas to which this agreement may apply to pursuant to Schedule A Article 8 and/or any other appendices save and except employees employed as non-working foremen, watchmen and engineering staff." (1 employee in unit)

Number of names of persons on revised voters' list	1
Number of persons who cast ballots	1
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	1

Number of ballots segregated and not counted

0

0775-10-R: Stephen Anger (Applicant) v. Labourers' International Union of North America, Local 1059 (Respondent) v. Benef Concrete Ltd. (Intervener) (*Dismissed*)

Unit: "all its construction employees engaged in concrete forming and finishing construction on all construction projects within the counties of Middlesex, Bruce, Elgin, Oxford, Perth, and Huron, save and except non-working foremen and persons above the rank of non-working foremen, office, clerical and engineering staff." (5 employees in unit)

1472-10-R: Gary Mirault (Applicant) v. United Steelworkers, Local 1-1000 (Respondent) (*Granted*)

Unit: "all employees of W.C. Edwards Lumber, A Division of Commonwealth Plywood Co. Ltd. in the City of Pembroke, save and except supervisors and persons above the rank of supervisor, office and sales staff." (7 employees in unit)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	2
Number of ballots marked against respondent	5
Number of ballots segregated and not counted	0

APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE

3943-09-U: Fort Frances Community Clinic Inc. (Applicant) v. Nelson Medicine Professional Corporation (Respondent) v. The Canadian Union of Public Employees Local 65 (Intervener) (*Withdrawn*)

COMPLAINTS OF UNFAIR LABOUR PRACTICE

2950-08-U: United Brotherhood of Carpenters and Joiners of America, Local 1669 (Applicant) v. 587435 Ontario Inc. (o/a DRD Construction Services) (Respondent) (*Withdrawn*)

0724-09-U: Kamal Parma (Applicant) v. Canadian Union of Public Employees and its Local 1712 (Respondent) v. Stoney Creek Lifecare (Intervener) (*Withdrawn*)

1046-09-U: Peter Thielier (Applicant) v. UNITE HERE Local 75 (Respondent) (*Dismissed*)

1048-09-U: Seble Woldetsadik (Applicant) v. UNITE HERE Local 75 (Respondent) v. Yonge Street Hotels c.o.b. as the Courtyard by Marriott Downtown Toronto (Intervener) (*Dismissed*)

1239-09-U: Ontario Provincial Conference of the International Brotherhood of Bricklayers and Allied Craftworkers by its Agent the Brick & Allied Craft Union Local 31 and the Brick & Allied Craft Union of Canada Local 31 (Applicant) v. Gemstar Canada Inc., Gemstar Group, Stonetech Enterprises Inc., Cogemar America Inc., Yavor Stone (Respondents) (*Dismissed*)

1924-09-U: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) and its Local 2020-005 and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) and its Local 6500 (Applicant) v. Vale Inco Limited (Respondent) (*Withdrawn*)

2074-09-U: Joseph Jean-Baptiste (Applicant) v. Canadian Union of Public Employees and its Local 3519 (Respondent) v. Conseil scolaire de district du Centre-Sud-Ouest (Intervener) (*Dismissed*)

2595-09-U: Celina Major (Applicant) v. United Food and Commercial Workers International Union, Local 333 (Respondent) v. Innvest Hotels GP Ltd. (o/a Quality Suites Whitby Comfort Inn) (Intervener) (*Dismissed*)

3202-09-U: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. MJ Manufacturing - A Division of Martinrea International Inc. (Respondent) (*Withdrawn*)

3307-09-U: Lafarge Canada Inc. (Applicant) v. Teamsters Local Union 879 (Respondent) (*Withdrawn*)

3385-09-U: Glen DeFrias (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union Canada and its Local 462 (CAW) (Respondent) v. Parmalat Canada Inc. (Intervener) (*Withdrawn*)

3944-09-U: Fort Frances Community Clinic Inc. (Applicant) v. Nelson Medicine Professional Corporation, Maureen Gartshore (Respondents) v. The Canadian Union of Public Employees Local 65 (Intervener) (*Withdrawn*)

3982-09-U: John Lelacheur (Applicant) v. Jimmy Hazel "President" Maintenance & Construction Skilled Trades Council (Respondent) (*Dismissed*)

0001-10-U: Trent University Faculty Association (Applicant) v. Trent University (Respondent) (*Withdrawn*)

0108-10-U: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 736 (Applicant) v. Terrasan Metal Fabricators Inc. (Respondent) (*Withdrawn*)

0119-10-U: Tariq Alikham (Applicant) v. CAW (Respondent) (*Withdrawn*)

0180-10-U: Paul W. G. Watkins (Applicant) v. Canadian Union of Public Employees and its Local 5167 (Respondent) v. City of Hamilton (Intervener) (*Dismissed*)

0216-10-U: Sheikh-Nur Mohamud (Applicant) v. United Food and Commercial Workers Canada, Local 175 (Respondent) v. National Car Rental (Intervener) (*Dismissed*)

0229-10-U: Paul R. Brown (Applicant) v. UFCW 175 (Respondent) v. Loblaw Companies Limited (Intervener) (*Dismissed*)

0453-10-U: The Ontario Public Service Employees Union (Applicant) v. Parents of Technologically Dependent Children of Ontario (Respondent) (*Withdrawn*)

0476-10-U; 0478-10-U: Karen Egesi (Applicant) v. Association of Management, Administrative and Professional Crown Employees of Ontario (AMAPCEO) (Respondent) v. Crown in Right of Ontario (Intervener) (*Dismissed*)

0709-10-U: Jamie Hartley (Applicant) v. United Food and Commercial Workers Canada Locals 175 & 633 (Respondent) (*Dismissed*)

0838-10-U: Sam Lavina (Applicant) v. Ottawa-Carleton Public Employees Union (Respondent) v. City of Ottawa (Intervener) (*Dismissed*)

1014-10-U: Ontario Public Service Employees Union (Applicant) v. Peterborough Regional Health Centre (Respondent) (*Withdrawn*)

1085-10-U: Elementary Teachers' Federation of Ontario/, Grand Erie Elementary Teachers' Federation (Applicants) v. Grand Erie District School Board, Jim Wibberley, Andy Nesbitt, Giancarlo Crotta (Respondents) (*Withdrawn*)

1125-10-U: United Food and Commercial Workers Canada, Local 175 (Applicant) v. Dana Hospitality Inc. c.o.b. as Tim Hortons (Respondent) (*Withdrawn*)

1200-10-U: The Ontario Public Service Employees Union (Applicant) v. Health Care Vocational Centres c.o.b. as Medix School (Respondent) (*Withdrawn*)

1429-10-U: International Union of Operating Engineers, Local 793 (Applicant) v. Taranis Contracting Group (Respondent) (*Withdrawn*)

1457-10-U: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Medical Laboratories of Windsor Limited (Respondent) (*Withdrawn*)

1680-10-U: International Association of Machinists and Aerospace Workers (Applicant) v. Poraver North America (Respondent) (*Withdrawn*)

APPLICATION FOR INTERIM ORDER

1459-10-M: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Medical Laboratories of Windsor Limited (Respondent) (*Withdrawn*)

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

1197-10-M: Minute Maid Co. Canada Inc. (Applicant) v. United Food and Commercial Workers Union, Canada Local 175 (Respondent) (*Granted*)

JURISDICTIONAL DISPUTES

3903-07-JD; 3919-07-JD; 2219-08-JD; 2959-08-JD; 3129-08-JD; 3147-08-JD; 3161-08-JD; 3162-08-JD; 0147-09-JD: The Crown in Right of Ontario as represented by the Ministry of Government and Consumer Services (Applicant) v. Ontario Public Service Employees Union (Respondent) v. Association Of Management, Administrative And Professional Crown Employees Of Ontario (Amapceo) (Intervener); The Crown in Right of Ontario as represented by the Ministry of Government and Consumer Services (Applicant) v. Ontario Public Service Employees Union (Respondent); The Crown in Right of Ontario as represented by the Ministry of Government Services (Applicant) v. Ontario Public Service Employees Union (Respondent) (*Withdrawn*)

3314-09-JD: The United Brotherhood of Carpenters and Joiners of America, Local 1669 of the Carpenters District Council of Ontario (Applicant) v. Vector Construction Ltd.; and, Construction and Allied Workers, Local Union 607 (Respondents) (*Granted*)

0255-10-JD: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Roma Fence Limited, Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Respondents) (*Terminated*)

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

3204-09-OH: Vlad Perelman (Applicant) v. Amelt Corporation (Respondent) (*Withdrawn*)

0595-10-OH: Jason Roth (Applicant) v. Ultratec Special Effects Inc (Respondent) (*Withdrawn*)

1143-10-OH: Joshua Slager (Applicant) v. Cara Operations Limited (Respondent) (*Withdrawn*)

1236-10-OH: Frances Marcotte (Applicant) v. Pipat Sripimolphan (Respondent) (*Terminated*)

CONSTRUCTION INDUSTRY GRIEVANCES

3467-07-G: Carpenters and Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Terrastone Construction Inc. (Respondent) (*Endorsed Settlement*)

3440-08-G: Canadian Union of Skilled Workers (Applicant) v. Hydro One Inc. (Respondent) (*Withdrawn*)

0373-09-G: Canadian Union of Skilled Workers (Applicant) v. Hydro One Inc. (Respondent) (*Granted*)

0955-09-G; 1679-09-G; 1680-09-G: Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. Tectonic Infrastructure Inc. (Respondent); Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Tectonic Infrastructure Inc. (Respondent) (*Withdrawn*)

3008-09-G; 3009-09-G: Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. Galrich Restoration Inc. (Respondent) (*Withdrawn*)

0099-10-G; 0100-10-G; 0103-10-G; 0104-10-G; 0109-10-G; 0110-10-G: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Kingswood Carpentry Ltd. (Respondent); Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Silver Carpentry (1997) Limited (Respondent); Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Capelas Homes Ltd. and/or, 1375069 Ontario Ltd., 1375070 Ontario Ltd. (Respondents); Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Corrado Carpenter Contractor Ltd. (Respondent); Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Primarco Carpentry Inc. (Respondent); Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Bridgewood Carpentry Limited (Respondent); Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. 1339243 Ontario Limited o/a Delta Contractors (Respondent) (*Withdrawn*)

0166-10-G: Residential Framing Contractors Association of Metropolitan Toronto & Vicinity Inc. (Applicant) v. Universal Workers Union, Labourers' International Union of North America Local 183 (Respondent) (*Withdrawn*)

0715-10-G: Labourers' International Union of North America, Local 506 (Applicant) v. Aecon Industrial (Respondent) (*Withdrawn*)

0925-10-G: Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. PNR Railworks Inc. (Respondent) (*Withdrawn*)

1044-10-G: Labourers' International Union of North America, Local 837 (Applicant) v. Bravo Cement Contracting (Hamilton) Inc., 829194 Ontario Limited, 493672 Ontario Limited (Respondents) (*Endorsed Settlement*)

1063-10-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Ainsworth Inc. (Respondent) (*Withdrawn*)

1076-10-G: International Union of Elevator Constructors, Local 96 (Applicant) v. Otis Canada Inc. (Respondent) (*Granted*)

1122-10-G; 1123-10-G: Labourers' International Union of North America, Local 506 (Applicant) v. Versa Construction Limited (Respondent); Labourers' International Union of North America, Local 506 (Applicant) v. Rodan Site Servicing Ltd. (Respondent) (*Terminated*)

1139-10-G: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Donald Contracting Limited (Respondent) (*Withdrawn*)

1186-10-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Sterling Concrete Sawing and Drilling Ltd. (Respondent) (*Withdrawn*)

1222-10-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Superior Door & Gate Systems Inc. (formerly Superior Door & Gate Systems Limited) (Respondent) (*Endorsed Settlement*)

1304-10-G: International Brotherhood of Electrical Workers, Electrical Power Council of Ontario (Applicant) v. Aecon Industrial Division of Aecon Group Inc. (Respondent) (*Withdrawn*)

1332-10-G: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Gall Construction Limited o/a Acapulco Pools Limited (Respondent) (*Withdrawn*)

1356-10-G: International Union of Operating Engineers, Local 793 (Applicant) v. United Contracting (London) (Respondent) (*Withdrawn*)

1383-10-G: International Union of Operating Engineers, Local 793 (Applicant) v. Ekum-Sekum Incorporated o/a Brantco (Respondent) (*Withdrawn*)

1394-10-G: Carpenters District Council of Ontario, Local Union 93 (Applicant) v. Reemaco Inc. (Respondent) (*Granted*)

1430-10-G: International Union of Operating Engineers, Local 793 (Applicant) v. Taranis Contracting Group (Respondent) (*Withdrawn*)

1439-10-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Metro Hoisting and Erecting Limited and, Jason Leibeck (Respondents) (*Endorsed Settlement*)

1441-10-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Prim Renovations Inc. and Jonathan Jose DaSilva Parra (Respondent) (*Withdrawn*)

1447-10-G: International Association of Heat and Frost Insulators and Allied Workers, Local 95 (Applicant) v. Victoria Insulation Ltd. (Respondent) (*Granted*)

1471-10-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. El Sauce Interior Ltd. (Respondent) (*Granted*)

1490-10-G: United Brotherhood of Carpenters and Joiners of America, Local 397 (Applicant) v. Traugott Building Contractors Inc. (Respondent) (*Withdrawn*)

1500-10-G: Labourers' International Union of North America, Local 506 (Applicant) v. Envirocon Abatements Ltd. (Respondent) (*Endorsed Settlement*)

1541-10-G: Sheet Metal Workers' International Association, Local 504 (Applicant) v. Nova Steel Systems Sudbury Inc. (Respondent) (*Endorsed Settlement*)

1562-10-G: United Brotherhood of Carpenters and Joiners of America, Local 397 (Applicant) v. Omega General Construction Inc. c.o.b. as Omega Drywall Inc. (Respondent) (*Terminated*)

1565-10-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 765 (Applicant) v. Bird Construction Company (Respondent) (*Withdrawn*)

1579-10-G: Construction Workers Local 52 affiliated with Christian Labour Association of Canada (Applicant) v. Maple Reinders Constructors Ltd. (Respondent) (*Withdrawn*)

1604-10-G: United Brotherhood of Carpenters and Joiners of America, Local 93, Local 249, Local 397, Local 446 Local 494, Local 785, Local 1669, Local 1946, Local 2222, Local 2486 hereinafter known as "Carpenter Local Unions participating in the OPC Trust Funds") (Applicant) v. CC Group Contracting Inc. (Respondent) (*Granted*)

1607-10-G: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. CAP Concrete Structures Ltd. and, Domenico Attisano (Respondents) (*Granted*)

1619-10-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 463 (Applicant) v. Leeson Mechanical Contractors Ltd. (Respondent) (*Granted*)

1623-10-G: United Brotherhood of Carpenters and Joiners of America, Local 93, Local 249, Local 397, Local 446, Local 494, Local 785, Local 1669, Local 1946, Local 2222, Local 2486 hereinafter known as "Carpenter Local Unions participating in the OPC Trust Funds") (Applicant) v. Cap Concrete Structures Ltd. (Respondent) (*Granted*)

1638-10-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Valentin Sokolov c.o.b. as Rainbow Stucco Systems (Respondent) (*Withdrawn*)

1685-10-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Bernie Klaus Duewel c.o.b. as BKD Interiors (Respondent) (*Granted*)

APPEALS - EMPLOYMENT STANDARDS ACT

1072-08-ES: Andrew Piechocinski (Applicant) v. Toronto Standard Condominium Corporation No. 1519 and, Director of Employment Standards (Respondents) (*Dismissed*)

1082-09-ES: Patrizia Paniccia, a director of Baby Steps Photography Inc. (Applicant) v. Laura Alaimo-Magnifico and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)

1208-09-ES: Michael S. Gear (Applicant) v. HT Tire Service Ltd., Director of Employment Standards (Respondents) (*Endorsed Settlement*)

1311-09-ES: William A. Attwood o/a Gemstones 'N Silver (Applicant) v. Jeremy Sieberer and, Director of Employment Standards (Respondents) (*Granted*)

2506-09-ES: GCR Tire Centres (Applicant) v. Stanley Specht, Director of Employment Standards (Respondents) (*Endorsed Settlement*)

2660-09-ES: Carmine Sturino, a Director of Precision Engine Rebuilders Limited (Applicant) v. Matthew Walker and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)

2812-09-ES: 1278932 Ontario Inc. o/a Belleville Pro Bowl (Applicant) v. Dylan Pollard and, Director of Employment Standards (Respondents) (*Terminated*)

3124-09-ES: 970910 Ontario Inc. o/a Prestige Motors (Applicant) v. Frank Hildebrand and, Director of Employment Standards (Respondents) (*Dismissed*)

3194-09-ES: Ralph Cummings (Applicant) v. Alam Auto Service Inc. and (Respondent) (*Endorsed Settlement*)

3259-09-ES: David Ingraldi, a director of Geldex Inc. (Applicant) v. Shaji Vallath, Karuvan Baburaj and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)

3308-09-ES: Apple Lane Retirement Home Inc. o/a Village Manor (Applicant) v. Kate Weeks and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)

3455-09-ES: 1648819 Ontario Ltd. o/a LA Quality Foods (Applicant) v. Ronald Bott and, Director of Employment Standards (Respondents) (*Granted*)

3470-09-ES: Chris Garovat (Applicant) v. PHF Acquisition Company o/a Air-Way Canada, Director of Employment Standards (Respondents) (*Endorsed Settlement*)

3583-09-ES: Marskell Group Inc. (Applicant) v. Helen Primorac and, Director of Employment Standards (Respondents) (*Terminated*)

3606-09-ES: Home Hardware (Applicant) v. Dave Poole and, Director of Employment Standards (Respondents) (*Dismissed*)

3712-09-ES: Daniel A. Colburn (Applicant) v. ADT Security Services Canada, Inc./ Services de sécurité ADT Canada, inc. and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)

3876-09-ES: Richard A. Stitt (Applicant) v. Primary Response Inc. and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)

3883-09-ES: Janet Granata (Applicant) v. Versa Construction Limited and, Director of Employment Standards (Respondents) (*Withdrawn*)

3950-09-ES: J.F. Lithographers Inc. (Applicant) v. Derek Eckensviller and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)

3951-09-ES: 1675441 Ontario Limited o/a Trent Roofing and General Contracting (Applicant) v. Matthew Canning and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)

3964-09-ES: Kevin Thomas (Applicant) v. Ventura Towing Inc. and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)

0084-10-ES: Robert Parker; Anton Kitai; Paul Labelle, Directors of 4429681 Canada Inc. o/a Dipix Technologies Inc. (Applicant) v. Simon Jones and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)

0085-10-ES: Robert Parker; Anton Kitai; Paul Labelle, Directors of 4429681 Canada Inc. o/a Dipix Technologies Inc. (Applicant) v. Jonathan St. John and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)

0086-10-ES: Robert Parker; Anton Kitai; Paul Labelle, Directors of 4429681 Canada Inc. o/a Dipix Technologies Inc. (Applicant) v. Andrew Scott and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)

0087-10-ES: Robert Parker; Anton Kitai; Paul Labelle, Directors of 4429681 Canada Inc. o/a Dipix Technologies Inc. (Applicant) v. Derek Thorslund and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)

0089-10-ES: Robert Parker; Anton Kitai; Paul Labelle, Directors of 4429681 Canada Inc. o/a Dipix Technologies Inc. (Applicant) v. Hammad Abbasi and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)

0090-10-ES: Robert Parker; Anton Kitai; Paul Labelle, Directors of 4429681 Canada Inc. o/a Dipix Technologies Inc. (Applicant) v. John Lawrence and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)

0206-10-ES: Victoria Tarksy (Applicant) v. Svitlana Novoselova and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)

0430-10-ES: Delroy Lynch (Applicant) v. Alpa Lumber Mills Inc. and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)

- 0488-10-ES:** Thousand Island Tax/Duty Free Store Limited (Applicant) v. Catherine Goodwins, Director of Employment Standards (Respondents) (*Endorsed Settlement*)
- 0503-10-ES:** Amarpreet K. Hothi and Balwinder Jit Bedi (Applicant) v. Tomasa Lonogan and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)
- 0533-10-ES:** Garth Greenaway (Applicant) v. Yanch Heating and Air Conditioning (Barrie) Limited and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)
- 0615-10-ES:** Symtech Innovations Ltd. (Applicant) v. Dan Kotis and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)
- 0707-10-ES:** Hakim Faqiryar a director of 1685951 Ontario Inc. (Applicant) v. Fatema Khatun and, Director of Employment Standards (Respondents) (*Terminated*)
- 0750-10-ES:** Loon Lake Investments Ltd. carrying on business as Camp Quetico (Applicant) v. Clayton Stimson and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)
- 0809-10-ES:** Sunset Inns Inc. operating as Sunset Inn and Suites (Applicant) v. Bessie Mainville and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)
- 0813-10-ES:** U-Pak Recycling Ltd. o/a as U-Pak Disposals (1989) Limited (Applicant) v. Donald S. Wells and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)
- 0824-10-ES:** Alliance iCommunications Inc. (Applicant) v. Kelly Smith and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)
- 0827-10-ES:** Active Tire & Auto Centre Inc. o/a Active Green & Ross (Applicant) v. Raymond O'Keefe and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)
- 0852-10-ES:** 1710182 Ontario Inc. o/a Petro-Canada (Applicant) v. Rosemary Dressler and, Director of Employment Standards (Respondents) (*Terminated*)
- 0895-10-ES:** Starbridge Restaurant Inc. (Applicant) v. Ms. Jaime Braunig and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)
- 0902-10-ES:** 991909 Ontario Inc. operating as Tootsies Family Shoe Market (Applicant) v. Susan Blenkarn and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)
- 0905-10-ES:** 1521154 Ontario Inc. (Applicant) v. Matthew Gourlay and, Director of Employment Standards (Respondents) (*Dismissed*)
- 0906-10-ES:** 1521154 Ontario Inc. (Applicant) v. Mitchell St. Amant and, Director of Employment Standards (Respondents) (*Dismissed*)
- 0907-10-ES:** 1521154 Ontario Inc. (Applicant) v. Jennifer Edmonds and, Director of Employment Standards (Respondents) (*Dismissed*)
- 0908-10-ES:** 1521154 Ontario Inc. (Applicant) v. Chrystina Alampi and, Director of Employment Standards (Respondents) (*Dismissed*)
- 0909-10-ES:** 1521154 Ontario Inc. (Applicant) v. Mary McNaughton and, Director of Employment Standards (Respondents) (*Dismissed*)

0910-10-ES: 1521154 Ontario Inc. (Applicant) v. Jonathan Goddard and, Director of Employment Standards (Respondents) (*Dismissed*)

0911-10-ES: 1521154 Ontario Inc. (Applicant) v. Mathew St. Amant and, Director of Employment Standards (Respondents) (*Dismissed*)

0922-10-ES: Stonescape Ontario Inc. (Applicant) v. Douglas Bowman and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)

0927-10-ES: 2163099 Ontario Limited o/a Cyber Games Technologies (Applicant) v. Arif Jafri and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)

0948-10-ES: 4Poyntz Design Inc. (Applicant) v. Robert Nino and, Director of Employment Standards (Respondents) (*Terminated*)

0988-10-ES: Dr. Cheryl N. Sterling-Case Dentistry Professional Corporation (Applicant) v. Farah A. Mohammed and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)

1030-10-ES: Ted Calabretta, a director of Canadian Paging & Cellular Communication Services (Applicant) v. Zarina Pipersberg and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)

1211-10-ES: Ashlynn T. Vickery (Applicant) v. Canadian Wireless Communications Inc., Director of Employment Standards (Respondents) (*Withdrawn*)

1232-10-ES: Annabelle Carr (Applicant) v. 2035534 Ontario Limited o/a Rivard Cleaners, Director of Employment Standards (Respondents) (*Withdrawn*)

1239-10-ES: Vincent S. Vnuk (Applicant) v. Arnott Construction Limited and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)

1253-10-ES: Ali Abdurahman (Applicant) v. The Canadian Red Cross Society/La societe Canadienne de la Croix-Rouge, Director of Employment Standards (Respondents) (*Endorsed Settlement*)

1255-10-ES: Red Line Transportation Services (Applicant) v. Richard Brown and, Director of Employment Standards (Respondents) (*Dismissed*)

1259-10-ES: Emanuel Bergman o/a Bergman Trucking (Applicant) v. Jason G. Meawasige and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)

1270-10-ES: 2012710 Ontario Inc. operating as Pure Med Spa (Applicant) v. Sandra Guerard and, Director of Employment Standards (Respondents) (*Dismissed*)

1280-10-ES: 2009915 Ontario Inc. (Applicant) v. Jacques Nadon and, Director of Employment Standards (Respondents) (*Dismissed*)

1283-10-ES: PHI Properties Inc. (Applicant) v. Director of Employment Standards (Respondent) (*Dismissed*)

1310-10-ES: 1786578 Ontario Ltd. operating as Peterborough Inn & Suites (Applicant) v. Karen Scanlan and, Director of Employment Standards (Respondents) (*Endorsed Settlement*)

1343-10-ES: Camelot, Director of Employment Standards (Respondents) (*Terminated*)

1381-10-ES: Narda Duffey (Applicant) v. East York Residential Services Ltd. and, Director of Employment Standards (Respondents) (*Terminated*)

1384-10-ES: Montfort Plus Inc. (Applicant) v. Mr. Murad Issa and, Director of Employment Standards (Respondents) *(Terminated)*

1388-10-ES; 1389-10-ES: 257324 Ontario Limited (Applicant) v. Rejeanne Sabourin and, Director of Employment Standards (Respondents); 275324 Ontario Limited (Applicant) v. Andrew Kleiman, Esther Harry, Gerald Heaney, Damien Thomas, Jose Correia and, Director of Employment Standards (Respondents) *(Terminated)*

1396-10-ES: Cleaning Power Full Janitorial Services (Applicant) v. Bartolome Matamoros Ruig and, Director of Employment Standards (Respondents) *(Dismissed)*

1432-10-ES: Rezwealth Financial Services Inc. (Applicant) v. Valencia Bennett and, Director of Employment Standards (Respondents) *(Dismissed)*

1491-10-ES: Najeed Esho (Applicant) v. L.A. Global Auto Parts & Bumper Recyclers Ltd. and, Director of Employment Standards (Respondents) *(Terminated)*

1547-10-ES: Boniko Vryonides (Applicant) v. Glenway Country Club and, Director of Employment Standards (Respondents) *(Dismissed)*

1688-10-ES: Beresford Box Company Inc. (Applicant) v. Petar Loncar and, Director of Employment Standards (Respondents) *(Dismissed)*

APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

0275-09-HS: PCL Constructors Canada Inc. (Applicant) v. Labourers' International Union of North America, Local 247, Labourers' International Union of North America, Ontario Provincial District Council, Sheet Metal Workers International Association, Local Union 269, Ontario Sheet Metal Workers' & Roofers' Conference and, Kevin Kealey, Inspector (Respondents) *(Granted)*

1516-10-HS: The Home Depot (Applicant) v. Clay Bowing, Inspector (Respondent) *(Dismissed)*

PAY EQUITY ACT

1788-09-PE: Canadian Union of Public Employees, Local 1999 (Applicant) v. Lakeridge Health Corporation (Respondent) *(Dismissed)*

3529-09-PE: Pay Equity Commission (Applicant) v. Corsteel Hydraulics Ltd. (Respondent) *(Terminated)*

PUBLIC SECTOR LABOUR RELATIONS TRANSITION ACT, 1997

3697-09-PS: Ontario Public Service Employees Union (Applicant) v. Windsor Regional Hospital; Hotel-Dieu Grace Hospital; and, CAW Canada (Respondents) *(Endorsed Settlement)*

REFERRAL FROM MINISTER (SEC. 3(2)) HLDA

2365-09-M: Rothwell Heights Lodge (Applicant) v. Canadian Union of Public Employees and its Local 3317 (Respondent) *(Dismissed)*

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

3122-04-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 552 (Applicant) v. Greater Essex County District School Board (Respondent) (*Endorsed Settlement*)

1953-07-ES: Christopher Henderson, a director of Proteus Craftworks Inc. and, Richard Hotta, a director of Proteus Craftworks Inc. (Applicants) v. Mahammad Badiuzzaman, Paulo Barrientos, Thu Bui, Robert Cadogan, Chee-Man Chan, Wing Sang Chan, Nam Van Chu, Said Dakha, Alla Gluskin, Phat Huynh, Simon Ip, Chedomir Kalinic, Gary Koliopolos, Chhay Kom, Hoi Yew Kwan, Chi Wing Leung, David McGill, Long Van Nguyen, Lidija Nikolic, Dennis F. Outar, Dalin Pan, Alfredo Paragas Jr., Manuel Penas, Long Cuu Pham, Azmi Qubti, Mahadai Ramchand, Norm Randall, Liova Roiberg, Nabil Salback, Jagdeep Singh Sangha, Luckman Sathasivam, John Sham, Dhanraj Singh, Maurice G. Smith, Francis Suen, Leang Taing, Seung Wah Tam, Margarita Tan, Tong Nhat To, Frank E. Toppin, Kim Thach Tran, Vinh Nhan Tran, Khuong Dinh Tuan, Georgios Vavaroutsos, Louis Wenzl, Gordon Wilson, Boa Ming Zeng, Jian Zhen Zhang and, Director of Employment Standards (Respondents) (*Dismissed*)

3092-09-ES: Eva Lankin and Brian Joyce (Applicant) v. Merlita Tanaoit and, Director of Employment Standards (Respondents) (*Terminated*)

3459-09-ES: Celebrity Talents Inc. (Applicant) v. Donia Sawwan and, Director of Employment Standards (Respondents) (*Dismissed*)

3786-09-ES: Melodie S. Garcia (Applicant) v. Jane Saundercook and, Director of Employment Standards (Respondents) (*Granted*)

0410-10-R: Tim Heimpel (Applicant) v. The Labourers' International Union of North America, and the Labourers' International Union of North America, Ontario Provincial District Council, on behalf of its affiliated Local Unions, 183, 247, 493, 506, 527, 607, 625, 837, 1036, 1059, 1081 and 1089 (Respondent) v. Kieswetter Demolition (1992) Inc. (Intervener) (*Dismissed*)

1248-10-ES: 1715662 Ontario Ltd. operating as Speedy Auto Service (Applicant) v. Ralph Mauro, Director of Employment Standards (Respondents) (*Terminated*)

1398-10-R: Labourers' International Union of North America, Local 1059 (Applicant) v. Old Oak Developments Inc. (Respondent) (*Dismissed*)

1495-10-R: Construction Workers Local 53, affiliated with Christian Labour Association of Canada (CLAC) (Applicant) v. Iacobelli Construction Limited (Respondent) (*Dismissed*)

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING SEPTEMBER 2010

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

2371-09-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Array Canada Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Array Canada Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Array Canada Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

2535-09-R: United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. CCM Contracting Ltd. (Respondent) v. Labourers' International Union of North America, Local 493 (Intervener)

Unit: "all carpenters and carpenters' apprentices in the employ of CCM Contracting Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of CCM Contracting Ltd. in all sectors of the construction industry in within a radius of 57 kilometers (approximately 35 miles) of the City of Sudbury Federal Building, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

2581-09-R: Drywall Acoustic Lathing and Insulation Local 675 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Luxor Homes Corporation (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Luxor Homes Corporation in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Luxor Homes Corporation in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (3 employees in unit)

3884-09-R: United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. Urban Edge Shading Inc. and (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Urban Edge Shading Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Urban Edge Shading Inc. in all sectors of the construction industry in all other sectors of the construction industry within a radius of 33 kilometres (approximately 20 miles) of the North Bay post office, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

3992-09-R: Labourers' International Union of North America Ontario Provincial District Council (Applicant) v. 1528590 Ontario Limited o/a Samia Cement Services (Respondent)

Unit: "all construction labourers in the employ of 1528590 Ontario Limited o/a Samia Cement Services in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of 1528590 Ontario Limited o/a Samia Cement Services in all sectors of the construction industry in the County of Lambton, excluding the industrial, commercial and institutional sector, save and except non working foremen and persons above the rank of non working foreman" (2 employees in unit)

0328-10-R: Carpenters District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Ren-View Construction Group Ltd. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Ren-View Construction Group Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Ren-View Construction Group Ltd. in all sectors of the construction industry in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

0625-10-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. 2223894 Ontario Inc. o/a DMAC Painting (Respondent)

Unit: "all painters and painters' apprentices in the employ of 2223894 Ontario Inc. o/a DMAC Painting in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painters' apprentices in the employ of 2223894 Ontario Inc. o/a DMAC Painting in all sectors of the construction industry in the Counties of Essex and Kent and the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

1132-10-R: Carpenters District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Robert James Hutchinson c.o.b. as HR Renovations (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Robert James Hutchinson c.o.b. as HR Renovations in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Robert James Hutchinson c.o.b. as HR Renovations in all sectors of the construction industry in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

1382-10-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Sona Construction Limited (Respondent)

Unit: "all construction labourers in the employ of Sona Construction Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Sona Construction Limited in all sectors of the construction industry in the City of Hamilton, the City of Burlington and that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

1721-10-R: The Carpenters District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Royal Construction (Aménagement) Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Royal Construction (Aménagement) Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and foreman all carpenters and carpenters' apprentices in the employ of Royal Construction (Aménagement) Inc. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

1739-10-R: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Paul Girard o/a Electric Solutions and F & S Electric Solutions (Respondent)

Unit: "all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of Paul Girard o/a Electrical Solutions and F & S Electric Solutions in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of Paul Girard o/a Electrical Solutions and F & S Electric Solutions in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (5 employees in unit)

1763-10-R: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Steve Grujic c.o.b. S & G Roofing (Respondent)

Unit: "all roofers, metalmen and their helpers employed as dependent contractors by Steve Grujic c.o.b. S & G Roofing in all sectors of the construction industry in the Regional Municipality of Niagara and that portion of the Regional Municipality of Haldimand Norfolk coming within the former County of Haldimand, excluding the industrial, commercial and institutional sector, save and except non-working foremen, persons above the rank of non working foreman, persons engaged in re-roofing, hourly servicemen, flat roofers, aluminum/vinyl applicators, office, warehouse/shop and clerical employees" (2 employees in unit)

1776-10-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 853 (Applicant) v. Marvelle Mechanical Inc. (Respondent)

Unit: "all sprinkler fitters and sprinkler fitters' apprentices in the employ of Marvelle Mechanical Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all sprinkler fitters and sprinkler fitters' apprentices in the employ of Marvelle Mechanical Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

1875-10-R: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Technical Concrete Solutions Ltd. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Technical Concrete Solutions Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Technical Concrete Solutions Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

1918-10-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Brial Mechanical Inc. (Respondent)

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Brial Mechanical Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

1933-10-R: Carpenters District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 1408782 Ontario Inc. c.o.b. as Framework (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of 1408782 Ontario Inc. c.o.b. as Framework in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of 1408782 Ontario Inc. c.o.b. as Framework in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

1936-10-R: Carpenters District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Markside Construction Ltd. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Markside Construction Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Markside Construction Ltd. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

1973-10-R: Carpenters District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. D.L.S. Construction Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of D.L.S. Construction Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of D.L.S. Construction Inc. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

1992-10-R: The International Union of Painters and Allied Trades, Local 1891 (Applicant) v. E McLachlan Enterprises (Lobo) Limited (Respondent)

Unit: "all painters and painters' apprentices in the employ of E McLachlan Enterprises (Lobo) Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painters' apprentices in the employ of E McLachlan Enterprises (Lobo) Limited in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin and the City of Hamilton, the City of Burlington and that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

2011-10-R: Carpenters District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Materiaux J.C. Brunet Inc. (Respondent)

Unit: "all painters and painters' apprentices in the employ of Materiaux J.C. Brunet Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters'

apprentices in the employ of Materiaux J.C. Brunet Inc. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

2012-10-R: Christian Labour Association of Canada (Applicant) v. MBM Electrical Services Inc. (Respondent)

Unit: "all journeymen and apprentice electricians in the employ of MBM Electrical Services Inc. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

2015-10-R: Labourers' International Union of North America, Local 625 (Applicant) v. SNC Construction Consultants & Rental Inc. (Respondent)

Unit: "all construction labourers in the employ of SNC Construction Consultant & Rental. Inc in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional sector, and all construction labourers in the employ of SNC Construction Consultant & Rental. Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

Bargaining Agents Certified Subsequent to Vote

1155-06-R: York University Staff Association (Applicant) v. York University (Respondent)

Unit: "all employees of York University employed in Organized Research Units save and except persons exercising managerial authority for purposes of s. 1(3) (b) of the Act, persons above that rank, Research Associates and employees covered by a subsisting collective agreement" (246 employees in unit) (*Having regard to the agreement of the parties.*) (*Clarity Note*)

Number of names of persons on revised voters' list	233
Number of persons who cast ballots	98
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	49
Number of segregated ballots cast by persons whose names appear on voter's list	46
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	48
Number of ballots marked against applicant	47
Number of ballots segregated and not counted	3

1497-09-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Pharmx Rexall Drug Stores Ltd. (Respondent) v. United Food and Commercial Workers International Union, Local 175 (Intervener)

Unit: "all employees of Pharmx Rexall Drug Stores Ltd. at 1160 Beaverwood Road in the City of Ottawa, save and except Assistant Store Manager and persons above the rank of Assistant Store Manager and graduate and undergraduate pharmacists including pharmacy interns and apprentice pharmacists." (22 employees in unit)

Number of names of persons on revised voters' list	27
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	0

Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

1558-10-R: Amalgamated Transit Union, Local 113 (Applicant) v. Veolia Transportation Services (Canada), Inc. (Respondent)

Unit: "all employees of Veolia Transportation Services (Canada), Inc. who are employed in respect of public transit under contract with the Regional Municipality of York, save and except office and sales staff, inspectors, supervisors, persons above the rank of supervisor, and persons for whom another trade union holds bargaining rights as at the date this application is made" (210 employees in unit) *(Having regard to the agreement of the parties.) (Clarity Note)*

Number of names of persons on revised voters' list	212
Number of persons who cast ballots	149
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	141
Number of segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	139
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	8

1686-10-R: Ontario Secondary School Teachers' Federation (OSSTF/FEESO) (Applicant) v. Renfrew County District School Board (Respondent)

Unit: "all employees employed as Early Childhood Educators by the Renfrew County District School Board, save and except supervisors and persons above the rank of supervisors" (6 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of ballots marked in favour of applicant	6

1696-10-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Watson Building Supplies Inc. (Respondent)

Unit: "all employees of the Watson Building Supplies Inc. working in and out of the City of Burlington, Ontario, save and except supervisors, persons above the rank of supervisor, dispatchers, office, clerical and sales staff and students employed in the summer months" (15 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	18
Number of persons who cast ballots	18
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	0

Number of spoiled ballots	0
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	7
Number of ballots segregated and not counted	0

1710-10-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. 2033253 Ontario Inc. cob as Magic Maintenance (Respondent)

Unit: "all employees of 2033253 Ontario Inc. cob as Magic Maintenance employed at Yonge-Dundas Square, 40 Dundas Street West, in the City of Toronto, Ontario, save and except supervisors and persons above the rank of supervisor, office and clerical staff" (12 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	0

1735-10-R: Elementary Teachers' Federation of Ontario (ETFO) (Applicant) v. Durham District School Board (Respondent)

Unit: "all designated early childhood educators in the employ of the Durham District School Board save and except supervisors and persons above the rank of supervisor" (44 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	45
Number of persons who cast ballots	27
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	27
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	27
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1737-10-R: Service Employees International Union Local 1 Canada (Applicant) v. Yee Hong Centre for Geriatric Care (Markham) (Respondent)

Unit: "all employees in housekeeping, dietary, laundry department, facility aide, maintenance and activation of Yee Hong Centre for Geriatric Care (Markham) in the City of Markham save and except supervisor, persons above the rank of supervisor, office and clerical, registered nurse, registered practical nurse, personal support worker, chaplain, receptionist, social worker and summer student" (51 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	51
Number of persons who cast ballots	48
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	48
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	26
Number of ballots marked against applicant	22
Number of ballots segregated and not counted	0

1740-10-R: Ontario Public Service Employees Union (Applicant) v. Équipe de santé familiale communautaire de l'Est d'Ottawa / Eastern Ottawa Community Family Health Team (Respondent)

Unit: "all employees of Équipe de sante familiale communautaire de l'Est d'Ottawa / Eastern Ottawa Community Family Health Team in the City of Ottawa, save and except supervisors and persons above the rank of supervisor, persons employed in a confidential capacity in matters relating to labour relations, Finance Director, and Clinical Coordinator" (23 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	21
Number of persons who cast ballots	20
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	19
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	14
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	1

1757-10-R: Service Employees International Union Local 1 Canada (Applicant) v. Kingsway Arms Management (@ McCowan) Inc. (Respondent)

Unit: "all employees of Kingsway Arms Management (@ McCowan) Inc. in the City of Toronto, save and except supervisors, persons above the rank of supervisor and office and clerical" (40 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	45
Number of persons who cast ballots	39
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	38
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	37
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	0

1765-10-R: Workers United Ontario Council (Applicant) v. Muir Cap & Regalia Limited (Respondent) v. UNITE HERE (Intervener)

Unit: "all employees of Muir Cap & Regalia Limited, save and except foremen, office and sales staff, and persons regularly employed for not more than twenty-four (24) hours per week" (15 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	15
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	14
Number of ballots marked in favour of intervener	0
Number of ballots segregated and not counted	0

1789-10-R: Workers United Ontario Council (Applicant) v. Aramark Canada Ltd. (Respondent) v. UNITE HERE (Intervener)

Unit: "all food service and cleaning service employees of Aramark Canada Ltd. employed at the North Bay Jack Garland Airport, 50 Terminal Street, save and except supervisors, persons above the rank of supervisor, office and clerical staff" (4 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked in favour of intervener	0
Number of ballots segregated and not counted	0

1798-10-R: Elementary Teachers' Federation of Ontario (Applicant) v. Trillium Lakelands District School Board (Respondent)

Unit: "all employees employed as designated Early Childhood Educators (as defined by the Education Act) on a regular basis (not including Occasional designated Early Childhood educators) in the Early Learning Program at Trillium Lakelands District School Board as defined in the Education Act, save and except supervisors and persons above the rank of supervisor and those persons already represented by a trade union" (9 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	10

Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1818-10-R: Workers United Ontario Council (Applicant) v. Aramark Uniform Services (Canada) Ltd. (Respondent) v. UNITE HERE (Intervener)

Unit: "all production employees of Aramark Uniform Services (Canada) Ltd. at its facility in the City of Toronto, save and except office staff, office sales staff, supervisors and those above the rank of supervisor" (13 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	16
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	8
Number of ballots marked in favour of intervener	3
Number of ballots segregated and not counted	0

1824-10-R: Elementary Teachers' Federation of Ontario (Applicant) v. Grand Erie District School Board (Respondent)

Unit: "all employees employed as designated Early Childhood Educators (as defined by the Education Act) on a regular basis (not including Occasional designated Early Childhood Educators) in the Early Learning Program at Grand Erie District School Board as defined in the Education Act, save and except supervisors and persons above the rank of supervisor and those persons already represented by a trade union" (17 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	17
Number of persons who cast ballots	16
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	16
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	16
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1833-10-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Brain Injury Services of Northern Ontario (Respondent)

Unit: "all employees of Brain Injury Services of Northern Ontario in Northern Ontario save and except supervisors, persons above the rank of supervisor and office and clerical staff" (80 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	81
Number of persons who cast ballots	58
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	58

Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	40
Number of ballots marked against applicant	18

1851-10-R: Ontario Secondary School Teachers' Federation (OSSTF/FEESO) (Applicant) v. Algoma District School Board (Respondent) v. Elementary Teachers' Federation of Ontario (Intervener)

Unit: "all employees who are employed as Early Childhood Educators by the Algoma District School Board, save and except supervisors and persons above the rank of supervisors" (7 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

1857-10-R: Elementary Teachers' Federation of Ontario (Applicant) v. Rainbow District School Board (Respondent)

Unit: "all employees employed as designated Early Childhood Educators (as defined by the Education Act) on a regular basis (not including Occasional designated Early Childhood Educators) in the Early Learning Program at Rainbow District School Board as defined in the Education Act, save and except supervisors and persons above the rank of supervisor and those persons already represented by a trade union" (11 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1886-10-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. M.W. McGill and Associates Limited (Respondent)

Unit: "all employees of M.W. McGill and Associates Limited in the City of Pickering save and except supervisors, those above the rank of supervisor, draftspersons, and office, clerical, technical, and sales staff" (29 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	35
Number of persons who cast ballots	32
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	30
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	17
Number of ballots marked against applicant	13
Number of ballots segregated and not counted	2

1905-10-R: Canadian Union of Public Employees (Applicant) v. Huron-Perth Catholic District School Board (Respondent)

Unit: "all Designated Early Childhood Educators employed by the Huron-Perth Catholic District School Board, save and except supervisors and persons above the rank of supervisor and employees included in other bargaining units" (11 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

Applications for Certification Dismissed Without Vote

2442-07-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. SNC-Lavalin Inc. (Respondent)

3658-07-R; 3659-07-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. DLB Construction Limited (Respondent); Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Lewis Builds Corporation, DLB Construction Limited (Respondent)

2748-08-R: Labourers International Union of North America, Ontario Provincial District Council (Applicant) v. Vrancor Development Corporation (Respondent)

1945-10-R: Christian Labour Association of Canada (Applicant) v. MBM Electrical Services Inc. (Respondent)

Applications for Certification Dismissed Subsequent to Vote

3071-08-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. V.H.L. Developments (Markham Place) Inc. and, V.H.L. Developments Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of the responding party in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all carpenters and carpenters' apprentices in the employ of the responding party in all other sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the

Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	0

0177-10-R: Niagara Health Care & Service Workers Union Local 302 affiliated with the Christian Labour Association of Canada (Applicant) v. Quality Hotel & Conference Centre (Respondent) v. UFCW, Local 102 (Intervener)

Unit: "all employees of Quality Hotel and Conference Centre, Niagara Falls who fall within the bargaining unit currently represented by UFCW Canada Local 102, and without restricting the generality of the foregoing, all employees of Quality Hotel and Conference Centre, Niagara Falls who have completed probation and who are working as room attendants, laundry attendants, front desk, maintenance, and housekeeping lead hand position, and who have worked for at least seventy (70) working days of compensated service" (25 employees in unit)

Number of names of persons on revised voters' list	27
Number of persons who cast ballots	27
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	16
Number of segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of ballots marked in favour of applicant	9
Number of ballots marked in favour of intervener	18

0202-10-R: United Food and Commercial Workers Union Local 1977 (Applicant) v. Nestle Waters Canada, a division of Nestle Canada Inc. (Respondent)

Unit: "all employees of Nestle Waters Canada, a division of Nestlé Canada Inc. in the County of Wellington, save and except office clerical employees, seasonal contract associates, sales representatives, supervisors, those above the rank of supervisor and those excluded by the Act" (79 employees in unit)

Number of names of persons on revised voters' list	133
Number of persons who cast ballots	131
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	81
Number of segregated ballots cast by persons whose names appear on voter's list	50
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	34
Number of ballots marked against applicant	46
Number of ballots segregated and not counted	50

1216-10-R: International Association of Machinists and Aerospace Workers (Applicant) v. Poraver North America (Respondent)

Unit : "all employees of Poraver North America, in the Town of Innisfill, save and except supervisors, persons above the rank of supervisor and office, laboratory, clerical and sales staff" (19 employees in unit)

Number of names of persons on revised voters' list	23
Number of persons who cast ballots	23
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	20
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	10
Number of ballots segregated and not counted	2

1584-10-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Magic Maintenance (Respondent)

Unit: "All employees of Magic Maintenance employed in the City of Toronto, Ontario, save and except supervisors and persons above the rank of supervisor, office and clerical staff." (12 employees in unit)

Number of names of persons on revised voters' list	25
Number of persons who cast ballots	23
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	14
Number of ballots segregated and not counted	0

1697-10-R: Labourers' International Union of North America, Local 527 (Applicant) v. VitalAire Canada Inc. (Respondent)

Unit: "all employees of Vitalaire Canada Inc. working in and out of the City of Ottawa, save and except supervisors, persons above the rank of supervisor and sales staff" (20 employees in unit)

Number of names of persons on revised voters' list	22
Number of persons who cast ballots	18
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	16
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	9
Number of ballots segregated and not counted	2

1751-10-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. 526093 Ontario Inc. o/a Taxi Taxi (Respondent)

Unit: "all employees, including dependent contractor of 526093 Ontario Inc., c.o.b. as Taxi Taxi, in the City of Oshawa, save and except supervisors, persons above the rank of supervisor, dispatchers, telephone staff, multicar/multiplate owners, and office and clerical staff" (58 employees in unit)

Number of names of persons on revised voters' list	66
Number of persons who cast ballots	60
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	57
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	22
Number of ballots marked against applicant	38
Number of ballots segregated and not counted	0

1842-10-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. 2033253 Ontario Inc. cob as Magic Maintenance (Respondent)

Unit: "all employees of Magic Maintenance employed within the City of Toronto pursuant to a contract between Magic Maintenance and the City of Toronto, save and except supervisors, persons above the rank of supervisor, office and clerical staff" (5 employees in unit)

Number of names of persons on revised voters' list	25
Number of persons who cast ballots	23
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	14
Number of ballots segregated and not counted	0

1852-10-R: Grand River Valley Health Care Employees Union Local 305 affiliated with the Christian Labour Association of Canada (Applicant) v. Caressant Care Nursing and Retirement Homes of Canada Ltd. (Listowel Retirement Home) (Respondent) v. Health, Office and Professional Employees (HOPE), a Division of Local 175, United Food and Commercial Workers, Canada (Intervener)

Unit: "all employees employed by Caressant Care Nursing Home of Canada Ltd. and/or Caressant Care Nursing and Retirement Homes Limited at the Caressant Care Retirement Home in the city of Listowel, regularly employed for not more than twenty-four (24) hours, save and except supervisors and those above the rank of Supervisor, registered and graduate nurses, office, clerical and maintenance staff" (23 employees in unit)

Number of names of persons on revised voters' list	23
Number of persons who cast ballots	22
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	22
Number of segregated ballots cast by persons whose names appear on voter's list	0

Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	7
Number of ballots marked in favour of intervener	15
Number of ballots segregated and not counted	0

Applications for Certification Withdrawn

1215-06-R: Labourers' International Union of North America, Local 1059 (Applicant) v. Double H Concrete Forming Inc. (Respondent)

0905-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. 2101016 Ontario Inc. c.o.b. as York Construction Academy and/or Thermotrust Inc. c.o.b. European Home Decore Centre and/or Phase 6 Demolition, 1632093 Ontario Inc. c.o.b. as Capital Construction & Project Management (Respondent)

3969-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. M.G.R. Contracting and Maintenance Ltd. (Respondent)

1727-10-R: Canadian Union of Public Employees (Applicant) v. University of Guelph (Respondent)

1771-10-R: Canadian Union of Public Employees (Applicant) v. Kenora - Patricia Child and Family Services (Respondent)

1791-10-R: International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (Applicant) v. Cambridge Rigging Ltd. (Respondent)

1877-10-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Cast Construction Inc. (Respondent) v. United Brotherhood of Carpenters and Joiners of America, Local 2486, Electrical Power Systems Construction Association (Intervener)

1932-10-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Canadian Apartment Properties Real Estate Investment Trust (Respondent)

2067-10-R: International Association of Machinists and Aerospace Workers (Applicant) v. VacAero International Inc. (Respondent)

2074-10-R: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Angelo G. Zitella c.o.b. as Zitella Drywall (Respondent)

APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

1483-07-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Mirtren Contractors Limited, Mirtren Construction Limited, Mirtren Builders Limited (Respondent) v. Construction Workers Local 52 affiliated with Christian Labour Association of Canada (Intervener) (*Dismissed*)

2936-07-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. SNC-Lavalin Inc., SNC-Lavalin Group Inc., SNC-Lavalin Power Ontario Inc. (Respondent) (*Dismissed*)

0384-08-R: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Perlane Construction Ltd., Perlane Construction Inc., Durigon Holdings Ltd., 2090950 Ontario Limited c.o.b. as PDG Theatre Land Holdings (Respondent) (*Dismissed*)

3495-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Dalron Construction Limited, Paris-Maki Holdings Ltd., 1717 Paris St. Inc., Dalron Group Limited, Dalron Commonholds Limited, Dalron Leasing Limited, Dalron Investments Inc. (Respondent) *(Withdrawn)*

1753-09-R: Labourers' International Union of North America, Local 1059 (Applicant) v. Double H Concrete Forming Inc. and, Vansmit Ltd. o/a Jay-Dee Concrete Forming (Respondent) *(Withdrawn)*

2332-09-R: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers District Council of Ontario, on its own behalf and on behalf of its Locals 721 and 736 (Applicant) v. 1226616 Ontario Inc. o/a Pittsburgh Steel, Pittsburgh Steel Company Ltd., 2061810 Ontario Inc. o/a Pittsburgh Steel Group (Respondent) *(Withdrawn)*

2446-09-R: United Brotherhood of Carpenters and Joiners of America Carpenters' District Council of Ontario (Applicant) v. Build-Force Construction Ltd., 1404406 Ontario Ltd., Build-Force Const. 2100, 1571108 Ontario Limited c.o.b. as Erada Construction (Respondent) *(Granted)*

3384-09-R: Labourers' International Union of North America Ontario Provincial District Council (Applicant) v. 2101016 Ontario Inc. c.o.b. as York Construction Academy, Thermotrust Inc. c.o.b. European Home Decore Centre and, 1632093 Ontario Inc. c.o.b. as Capital Construction and Project Management (Respondent) *(Withdrawn)*

1468-10-R: International Brotherhood of Electrical Workers, Local 120 (Applicant) v. Glenile Electric Ltd., 2176377 Ontario Inc. o/a Denby Electric and, Denby Electric Ltd. (Respondent) *(Withdrawn)*

SALE OF A BUSINESS

1483-07-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Mirtren Contractors Limited, Mirtren Construction Limited, Mirtren Builders Limited (Respondent) v. Construction Workers Local 52 affiliated with Christian Labour Association of Canada (Intervener) *(Dismissed)*

0384-08-R: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Perlane Construction Ltd., Perlane Construction Inc., Durigon Holdings Ltd., 2090950 Ontario Limited c.o.b. as PDG Theatre Land Holdings (Respondent) *(Dismissed)*

3495-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Dalron Construction Limited, Paris-Maki Holdings Ltd., 1717 Paris St. Inc., Dalron Group Limited, Dalron Commonholds Limited, Dalron Leasing Limited, Dalron Investments Inc. (Respondent) *(Withdrawn)*

1753-09-R: Labourers' International Union of North America, Local 1059 (Applicant) v. Double H Concrete Forming Inc. and, Vansmit Ltd. o/a Jay-Dee Concrete Forming (Respondent) *(Withdrawn)*

2332-09-R: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers District Council of Ontario, on its own behalf and on behalf of its Locals 721 and 736 (Applicant) v. 1226616 Ontario Inc. o/a Pittsburgh Steel, Pittsburgh Steel Company Ltd., 2061810 Ontario Inc. o/a Pittsburgh Steel Group (Respondent) *(Withdrawn)*

2446-09-R: United Brotherhood of Carpenters and Joiners of America Carpenters' District Council of Ontario (Applicant) v. Build-Force Construction Ltd., 1404406 Ontario Ltd., Build-Force Const. 2100, 1571108 Ontario Limited c.o.b. as Erada Construction (Respondent) *(Granted)*

3082-09-R: Public Service Alliance of Canada (Applicant) v. Omni Facility Services Canada Limited (Respondent) *(Withdrawn)*

0420-10-R: BFI Canada Inc. (Applicant) v. Teamsters Local Union No. 419 (Respondent) *(Granted)*

1468-10-R: International Brotherhood of Electrical Workers, Local 120 (Applicant) v. Glenile Electric Ltd., 2176377 Ontario Inc. o/a Denby Electric and, Denby Electric Ltd. (Respondent) (*Withdrawn*)

1677-10-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Mike Betti, a sole proprietor, c.o.b. Metro Forming and, Metro Forming Ltd. (Respondent) (*Granted*)

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

0396-10-R: Jake Klassen (Applicant) v. Universal Workers Union Local 183, L.I.U.N.A. Locals 247, 493, 506, 527, 625, 837, 1036, 1059, 1081, 1089, Construction and Allied Workers Local Union 607 and L.I.U.N.A. Ontario Provincial District Council (Respondent) (*Dismissed*)

Unit: "all construction labourers in the employ of Giesbrecht Construction Concrete Forming in the ICI sector of the construction industry in the Province of Ontario save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in unit)

0397-10-R: John Dyck (Applicant) v. Labourers' International Union of North America, Local 1059 and, Labourers' International Union of North America, Ontario Provincial District Council (Respondent) (*Dismissed*)

Unit: "all construction labourers in the employ of Giesbrecht Construction Concrete Forming in all sectors of the construction industry, save and except the ICI sector, in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in unit)

0985-10-R: Carole Bass (Applicant) v. Retail, Wholesale and Department Store Union, District Council of the United Food and Commercial Workers International Union (Respondent) (*Dismissed*)

Unit: "All employees of the employer save and except the assistant manager, managers, persons above the rank of managers and office staff" (31 employees in unit)

Number of names of persons on revised voters' list	32
Number of persons who cast ballots	24
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	22
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	14
Number of ballots marked against respondent	10
Number of ballots segregated and not counted	0

1499-10-R: All employees of Bombardier Transportation Canada Inc. Bombardier Transportation North America employed as Crew Dispatchers at the Willowbrook Facility in Toronto, Ontario (Applicant) v. Teamsters Canada Rail Conference Division 660 (Respondent) (*Dismissed*)

Unit: "all employees of Bombardier Transportation Canada Inc. Bombardier Transportation North America employed as Crew Dispatchers at the Willowbrook Facility in Toronto, Ontario" (5 employees in unit)

1576-10-R: The Employees that do not wish to be represented by the Ontario Public Service Employees Union (Applicant) v. Ontario Public Service Employees Union (Respondent) (*Dismissed*)

1716-10-R: Members of UFCW Local 175 Employees of Compass Foods at Bruce Power, Tiverton Ont. (Applicant) v. UFCW United Food and Commercial Workers Ontario, Local 175 & 633 (Respondent) v. Compass Group Canada Inc. (Intervener) (*Granted*)

Unit: "all employees of Compass Group Canada (Beaver) Ltd. at Bruce Power, save and except Supervisors, persons above the ranks of Supervisors and office staff." (30 employees in unit)

Number of names of persons on revised voters' list	30
Number of persons who cast ballots	28
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	27
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	5
Number of ballots marked against respondent	22
Number of ballots segregated and not counted	1

1760-10-R: Julie Martin (Applicant) v. 1112650 Ontario Inc., c.o.b. as Rogers Cove Retirement Home (Respondent) v. Rogers Cove Retirement Residence (Intervener) (*Terminated*)

Unit: "the Employer recognizes the Union duly certified by the Ontario Labour Relations Board since November 22, 2102, as the sole and exclusive bargaining agent of all employees of 1112650 Ontario Inc., c.o.b. as Rogers Cove Retirement Home in the City of Huntsville, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff and students employed in a dietary role for serving and dishwashing" (16 employees in unit)

Number of names of persons on revised voters' list	17
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	6
Number of ballots marked against respondent	8
Number of ballots segregated and not counted	1

1803-10-R: Enow Mohamed (Applicant) v. United Food and Commercial Workers Union Local 175 (Respondent) v. National Car Rental (Canada) Inc. (Intervener) (*Dismissed*)

Unit: "all its garage employees employed in Metropolitan Toronto and Mississauga, save and except assistant supervisors, supervisors and persons above the rank of supervisor." (94 employees in unit)

Number of names of persons on revised voters' list	94
Number of persons who cast ballots	84
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	83
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	43

Number of ballots marked against respondent
 Number of ballots segregated and not counted

40
 1

1912-10-R: Sabrina Eden (Applicant) v. Teamsters Local Union 938 (Respondent) (*Dismissed*)

1927-10-R: Sandra Koster (Applicant) v. Canadian Union of Public Employees and its Local 1263 (Respondent) v. Aids Niagara (Intervener) (*Dismissed*)

1972-10-R: AIDS Niagara Employees (Applicant) v. CUPE 1263 (Respondent) (*Dismissed*)

COMPLAINTS OF UNFAIR LABOUR PRACTICE

1272-06-U: Labourers' International Union of North America, Local 1059 (Applicant) v. Double H Concrete Forming Inc. and, Denis Hebert (Respondent) (*Withdrawn*)

1363-07-U: Ontario Public Service Employees Union (Applicant) v. Oaklands Regional Centre (Respondent) (*Granted*)

2699-07-U: Double H Concrete Forming Inc. (Applicant) v. Labourers' International Union of North America, Local 1059 (Respondent) (*Withdrawn*)

0453-08-U: Michael Lee Foon (Applicant) v. Sheet Metal Workers' International Association and Sheet Metal Workers' International Association Local Union No. 30 (Respondent) v. Nailor Industries Inc. (Intervener) (*Withdrawn*)

2753-08-U: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Vrancor Development Corporation (Respondent) (*Withdrawn*)

2850-08-U: George Carter (Applicant) v. National Automobile, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 1285 (Respondent) v. Chrysler Canada Inc. (Intervener) (*Dismissed*)

3442-08-U: Michael Wendall Allen (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 222 (Respondent) v. Syncreon Automotive (Intervener) (*Dismissed*)

0550-09-U; 1430-09-U; 1577-09-U: United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. WHL Management Limited Partnership (Respondent); WHL Management Limited Partnership (Applicant) v. United Food and Commercial Workers Canada, Local 175 (Respondent); United Food and Commercial Workers Canada, Local 175 (Applicant) v. WHL Management Limited Partnership (Respondent) (*Withdrawn*)

2471-09-U: United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. Lincare Ltd. (Respondent) (*Granted*)

2674-09-U: United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. CCM Contracting Ltd. (Respondent) (*Withdrawn*)

2776-09-U: International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 128 (Applicant) v. Kel-Gor Limited (Respondent) (*Withdrawn*)

2929-09-U: Balwinder Atwal (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 513 (Respondent) (*Dismissed*)

2966-09-U: Elementary Teachers' Federation of Ontario (Applicant) v. Upper Canada District School Board (Respondent) *(Withdrawn)*

3036-09-U: Jamie Denis (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial And Service Workers International Union (United Steelworkers), Local 455 (Respondent) *(Dismissed)*

3057-09-U: Frank Michaud (Applicant) v. Syndicat canadien de la fonction publique, section locale 4721 (Respondent) v. H8pital Montfort (Intervener) *(Dismissed)*

3610-09-U: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union 647 (Applicant) v. Canada Bread Company, Limited, Bakery, Confectionary, Tobacco Workers and Grain Millers International Union AFL-CIO,CLC, Local 264 (Respondent) *(Dismissed)*

3911-09-U: Scott Hurst on behalf of himself and a group of employees of Waste Management Inc. (Waterloo) (Applicant) v. Big Bear Employees Association also known as Big Bear Service Employees Association also known as Big Bear Services Employee Association (Respondent) v. Waste Management Inc. (Intervener) *(Withdrawn)*

1048-10-U: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. 1528590 Ontario Limited o/a Samia Cement Services and Raymond Duguay (Respondent) *(Withdrawn)*

1068-10-U: Catherine Sample (Applicant) v. Robert Shea, Business Agent; International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada Local 411 (Respondent) *(Withdrawn)*

0437-10-U: United Food and Commercial Workers Union Local 1977 (Applicant) v. Nestl~ Waters Canada, a division of Nestl6 Canada Inc. (Respondent) *(Withdrawn)*

0592-10-U: Carpenters District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Ren-View Construction Group Ltd. (Respondent) *(Terminated)*

0594-10-U: Nerissa James (Applicant) v. Service Employees International Union, Local 1 Canada (Respondent) v. Revera Retirement LP o/a Terrace Gardens Retirement Residence (Intervener) *(Dismissed)*

0974-10-U: International Brotherhood of Electrical Workers, Local 115 (Applicant) v. Dean Howell and D.R. Howell Electric Inc. (Respondent) *(Withdrawn)*

1093-10-U: International Union of Painters and Allied Trades, Local 1891 (Applicant) v. 2223894 Ontario Inc. o/a DMAC Painting (Respondent) *(Withdrawn)*

1151-10-U: United Food & Commercial Workers, Local 206 (Applicant) v. Machell Park Inc. o/a Howard Johnson Hotel (Respondent) *(Withdrawn)*

1442-10-U: Nelson Tennont (Applicant) v. CUPE and its Local 942 (Respondent) v. Royal Ottawa Hospital Dietary Dept. (Intervener) *(Dismissed)*

1526-10-U: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Superior Air Systems Ltd. (Respondent) *(Withdrawn)*

1560-10-U: Donald R. Vogt (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 523 (Respondent) v. The Corporation of the City of Welland (Intervener) *(Withdrawn)*

1674-10-U: Teamsters Local Union 847 (Applicant) v. Furlani's Food Corporation (Respondent) *(Withdrawn)*

1715-10-U: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. 2033253 Ontario Inc. cob as Magic Maintenance (Respondent) (*Withdrawn*)

1717-10-U: Mohinder Tiwana (Applicant) v. Teamsters Union Local 847 (Respondent) (*Terminated*)

2102-10-U: International association of Machinists and Aerospace Workers (Applicant) v. Poraver North America (Respondent) (*Terminated*)

APPLICATION FOR INTERIM ORDER

1536-10-M: 737986 Ontario Ltd o/a Don-Mor Carstar Collision (Applicant) v. Bruce Dube (Respondent) (*Dismissed*)

1597-10-M: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Jamwood Developments Inc., Cinelli Quadra Group Ltd., Cinelli, Mario in Trust, Cintrex Property Management Inc., Surrey Construction Inc., A-Motion Accessible Lifestyle Solutions, A & M Woodworking, Mar Jam Investment Ltd. and, Surrey Plaza Limited (Respondent) (*Withdrawn*)

1675-10-M: Teamsters Local Union 847 (Applicant) v. Furlani's Food Corporation (Respondent) (*Withdrawn*)

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

1821-10-M; 1822-10-M: Pinty's Delicious Foods Inc. (St. Catharines) (Applicant) v. United Food and Commercial Workers Canada, Local 175 (Respondent) (*Granted*)

1853-10-M: Maple Leaf Consumer Foods (Maple Leaf Meats Inc.) (Applicant) v. United Food and Commercial Workers Canada, Locals 175 & 633 (Respondent) (*Granted*)

JURISDICTIONAL DISPUTES

3497-08-JD; 3498-08-JD: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 736 (Applicant) v. Sutherland-Schultz Inc., Millwrights Local 1107 (Respondent) v. Electrical Power Systems Construction Association ("EPSCA") (Intervener) (*Withdrawn*)

0119-09-JD: Sheet Metal Workers' International Association, Local 30 (Applicant) v. Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America and, Carpenters and Allied Workers, Local 27, Drywall Acoustic Lathing and Insulation, Local 675 and, Flynn Canada Ltd. (Respondent) (*Withdrawn*)

0164-10-JD: Labourers' International Union of North America, Local 1059 (Applicant) v. Hydro One Networks Inc., United Brotherhood of Carpenters and Joiners of America, Carpenters' District Council of Ontario, Local 222 (Respondent) v. Electrical Power Systems Construction Association (Intervener) (*Granted*)

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

1004-10-OH: Steven De Prophetis (Applicant) v. Ministry of Labour (Mili New aka Milica New) (Respondent);

0748-10-OH: Michael Daley (Applicant) v. NIF Solutions Corp (Respondent) (*Terminated*)

0822-10-OH: Bernard Barwell (Applicant) v. Serv-A-Lawn Division of Donald Banks Inc. (Respondent) (*Withdrawn*)

CONSTRUCTION INDUSTRY GRIEVANCES

2481-07-G: Labourers' International Union of North America, Local 1059 (Applicant) v. Bruce Power LP (Respondent) v. Power Workers Union (Intervener) (*Withdrawn*)

3571-08-G; 3722-08-G: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Flynn Canada Ltd. (Respondent); Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America on behalf of itself and Drywall Acoustic Lathing and Insulation, Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Flynn Canada Ltd. (Respondent) (*Withdrawn*)

0430-09-G; 1582-09-G; 2571-09-G; 3790-09-G: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Camino Construction Inc./ Bolita Construction Inc. (Respondent) (*Endorsed Settlement*)

1134-09-G: ThyssenKrupp Elevators (Canada) Limited (Applicant) v. International Union of Elevator Constructors, Local 50 (Respondent) (*Withdrawn*)

3044-09-G: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. 614128 Ontario Ltd. o/a Trisan Construction (Respondent) (*Terminated*)

3405-09-G: Canadian Union of Skilled Workers (Applicant) v. Bruce Power LP (Respondent) (*Withdrawn*)

3862-09-G: United Brotherhood of Carpenters and Joiners of America, Local 1946 (Applicant) v. Northwood Carpet & Tile Company Ltd. (Respondent) (*Withdrawn*)

0156-10-G: Labourers' International Union of North America, Local 625 (Applicant) v. Mikhail Holdings Limited (Respondent) (*Withdrawn*)

0373-10-G: International Association of Bridge, Structural & Ornamental Iron Workers, Local Union 759 (Applicant) v. Harris Rebar, a division of Harris Steel ULC (Respondent) (*Granted*)

0484-10-G: Camino Construction Inc. (Applicant) v. Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Respondent) (*Endorsed Settlement*)

0622-10-G; 0624-10-G: International Union of Operating Engineers, Local 793 (Applicant) v. Aecon Construction and Materials (Respondent) (*Endorsed Settlement*)

0812-10-G: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Varcon Construction Corporation (Respondent) (*Withdrawn*)

0873-10-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 599 (Applicant) v. W.S Morgan Construction Ltd./ South Side Ltd. (Respondent) (*Endorsed Settlement*)

0961-10-G: Labourers' International Union of North America, Local 1059 (Applicant) v. Bruce Power LP (Respondent) (*Withdrawn*)

1354-10-G: Labourers' International Union of North America, Local 1059 (Applicant) v. Crossby Dewar Projects Inc. (Respondent) (*Withdrawn*)

1469-10-G: International Brotherhood of Electrical Workers, Local 120 (Applicant) v. Denby Electric Ltd. and/or, 2176377 Ontario Inc. o/a Denby Electric (Respondent) (*Withdrawn*)

1474-10-G: Operative Plasterers and Cement Masons and Restoration Steeplejacks International Associations of the United States and Canada Union Local 598 (Applicant) v. Paclaw Building Restoration Inc. (Respondent) (*Endorsed Settlement*)

1483-10-G: International Brotherhood of Electrical Workers, Local 804 (Applicant) v. Aecon Industrial, Division of Aecon Group Inc. (Respondent) (*Terminated*)

1601-10-G: Canadian Union of Skilled Workers (Applicant) v. Hydro One Inc. (Respondent) (*Withdrawn*)

1606-10-G: United Brotherhood of Carpenters and Joiners of America, Local 93, Local 249, Local 397, Local 446, Local 494, Local 785, Local 1669, Local 1946, Local 1988, Local 2222, Local 2486 (hereinafter known as "Carpenter Local Unions participating in the OPC Trust Funds") (Applicant) v. Ducan Ceiling & Walls Systems of Oshawa Limited (Respondent) (*Endorsed Settlement*)

1609-10-G: Carpenters and Allied Workers, Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Rex Lumber Corporation (Respondent) (*Endorsed Settlement*)

1618-10-G: Labourers' International Union of North America, Local 1059 (Applicant) v. Biggs & Narciso Construction Services Inc. (Respondent) (*Terminated*)

1635-10-G: Labourers' International Union of North America, Local 1036 (Applicant) v. R.M. Belanger Limited (Respondent) (*Withdrawn*)

1640-10-G: The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. Dart Glass Service Ltd. (Respondent) (*Withdrawn*)

1651-10-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Standard Electric (Toronto 1985) Inc. (Respondent) (*Endorsed Settlement*)

1671-10-G: Canadian Union of Skilled Workers (Applicant) v. Hydro One Inc. (Respondent) (*Withdrawn*)

1699-10-G: Construction and Allied Workers Local Union 607 (Applicant) v. Concreate USL Ltd. (Respondent) (*Terminated*)

1710-10-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. CC Group Contracting Inc and Janice Dougherty (Respondent) (*Endorsed Settlement*)

1723-10-G: The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. Pro Glass Services Inc. (Respondent) (*Granted*)

1733-10-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. I Solution Contracting Inc. (Respondent) (*Withdrawn*)

1741-10-G: United Brotherhood of Carpenters and Joiners of America, Local 397 (Applicant) v. 1151376 Ontario Limited c.o.b. Danco Building Services (Respondent) (*Withdrawn*)

1788-10-G: The International Union of Painters and Allied Trades, Local Union 1795 (Applicant) v. Welland Glass & Entrances Inc. (Respondent) (*Granted*)

1790-10-G: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Sterling Earth Works Inc. (Respondent) (*Withdrawn*)

1799-10-G: International Union of Operating Engineers, Local 793 (Applicant) v. Trifield Construction Company Ltd. (Respondent) *(Granted)*

1807-10-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. Leeson Mechanical Contractors Ltd. (Respondent) *(Granted)*

1810-10-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. 1086289 Ontario Inc. c.o.b. as Urban Electrical Contractors (Respondent) *(Withdrawn)*

1819-10-G: Labourers' International Union of North America, Local 625 (Applicant) v. L. Mailloux Construction (2100) Inc. (Respondent) *(Terminated)*

1838-10-G: Sheet Metal Workers' International Association, Local Union No.285 (Applicant) v. Marvelle Mechanical Inc. (Respondent) *(Granted)*

1846-10-G: Labourers' International Union of North America, Local 1059 (Applicant) v. PCN Construction Group Inc. (Respondent) *(Granted)*

1848-10-G: The International Union of Painters and Allied Trades, Local 210 (Applicant) v. Herve Pomerleau Inc. (Respondent) *(Endorsed Settlement)*

1849-10-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Select Drywall & Acoustics Inc. (Respondent) *(Withdrawn)*

1863-10-G: International Brotherhood of Electrical Workers, Local 105 (Applicant) v. Childerley Electric Inc. (Respondent) *(Granted)*

1876-10-G: Sheet Metal Workers' International Association, Local 30 (Applicant) v. Marvelle Mechanical Inc. (Respondent) *(Granted)*

1879-10-G: International Union of Operating Engineers, Local 793 (Applicant) v. Glen Park Construction Ltd. (Respondent) *(Granted)*

1938-10-G: International Association of Heat and Frost Insulators and Allied Workers, Local 95 (Applicant) v. Dewar Encon Inc./Nohos Encon Inc. (Respondent) *(Granted)*

1953-10-G: Labourers' International Union of North America, Local 1059 (Applicant) v. PCN Construction Group Inc. (Respondent) *(Granted)*

1963-10-G: International Union of Operating Engineers, Local 793 (Applicant) v. C.C. Construction Site Service Group Inc. (Respondent) *(Granted)*

1964-10-G: International Union of Operating Engineers, Local 793 (Applicant) v. C.C. Construction Site Service Group Inc. (Respondent) *(Granted)*

1989-10-G: International Union of Elevator Constructors, Local 50 (Applicant) v. CNIM Canada Inc. (Respondent) *(Withdrawn)*

2109-10-G: The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. Welsh Glassworks Inc. (Respondent) *(Granted)*

2010-10-G: International Union of Operating Engineers, Local 793 (Applicant) v. T C Contracting Inc. (Respondent) *(Granted)*

APPEALS EMPLOYMENT STANDARDS ACT

2094-09-ES: Marina Travel Agency Limited (Applicant) v. Norma Parrell and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

2826-09-ES: Flore Desjardins (Applicant) v. Wilda Louis-Youbain and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

2933-09-ES: Voda Corp. o/a Kultura Social Dining (Applicant) v. Kevin Wallace and, Director of Employment Standards (Respondent) (*Dismissed*)

2996-09-ES: Teletech Canada Inc. (Applicant) v. Pam Swanson and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3048-09-ES: Amy Grixti (Applicant) v. 2210621 Ontario Inc. o/a Pizza Pizza and, Director of Employment Standards (Respondent) (*Granted*)

3107-09-ES: Commercial Spring and Tool Company Limited (Applicant) v. William Frenke and, Director of Employment Standards (Respondent) (*Granted*)

3183-09-ES: Gordon Almadi, a Director of Cal Jet Performance Inc. (Applicant) v. Cindy Aparicio-Romero, Bill J. Farkas, Joshua Foster, Ian R. Lang and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3504-09-ES: Kevin Kocarik (Applicant) v. 1491955 Ontario Limited o/a Select Coffee Roasters Inc. and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3533-09-ES: Despina Debbie Melohe (Applicant) v. Aditya Birla Minacs Worldwide Inc. and, Director of Employment Standards (Respondent) (*Withdrawn*)

3633-09-ES: Metal Supermarkets Corporation (Applicant) v. Graham Murray and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3938-09-ES: Robert de Vries (Applicant) v. Newman Hattersley Ltd. and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3998-09-ES: Wall Machinery Movers Ltd. (Applicant) v. Robert Lick and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0267-10-ES: Carmen Jackson (Applicant) v. Orsini Bros. Inns Inc. o/a Doubletree Fallsview Resort and Spa and, Director of Employment Standards (Respondent) (*Withdrawn*)

0490-10-ES: Elizabeth V. Bongoyan (Applicant) v. Loblaw Companies Limited/Les Compagnies Loblaw Limitee and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0496-10-ES: TAS Convenience Store Inc. (Applicant) v. Emily Rolley and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0501-10-ES: Pansza Investments Inc. o/a As Aunt Molly's Coffee Shop & Gas Bar (Applicant) v. Doris E. Jewell and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0523-10-ES: 1524744 Ontario Inc. o/a D.M. Automotive (Applicant) v. Andrew Douglas and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0558-10-ES: 2162693 Ontario Inc. o/a St. Louis Bar & Grill (Applicant) v. Angela Kelly and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0559-10-ES: ABS Manufacturing and Distributing Limited (Applicant) v. Peter Palko and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0613-10-ES: Bayan Abdollah (Applicant) v. Proto Plastics Canada Ltd. and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0726-10-ES: Barley Mow Pub (Applicant) v. Tricia MacDonald and, Director of Employment Standards (Respondent) (*Terminated*)

0823-10-ES: The Ontario Aggregate Resources Corporation (Applicant) v. Jesse D. Long and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0836-10-ES: Crystal Topham (Applicant) v. Ellen Norrie and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0862-10-ES: Jerry J. Chaimovitz (Applicant) v. Ryan Allatt and, Director of Employment Standards (Respondent) (*Withdrawn*)

0884-10-ES: P.A. Trish Areta Fines and Larry Gordon Fines o/a AAA Superior Services (Applicant) v. Ruth Tadesse and, Director of Employment Standards (Respondent) (*Withdrawn*)

0940-10-ES: 2170230 Ontario Inc. o/a Best Western Midland (Applicant) v. Sarah Bearcroft and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0941-10-ES: 2170230 Ontario Inc. o/a Best Western Midland (Applicant) v. Lisa Bannon and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0973-10-ES: 501548 Ontario Ltd. o/a Ottawa Honda (Applicant) v. 10uhair Alkatib and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

1016-10-ES: Capital Sewer Services Inc. (Applicant) v. Patrick Martini and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

1026-10-ES: 1794448 Ontario Inc. o/a Adult Movie Warehouse (Applicant) v. Alexander Baker and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

1029-10-ES: Ted Calabretta, a director of Canadian Paging & Cellular Communication Services (Applicant) v. Sofya Babadzhyanov and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

1035-10-ES: 2153899 Ontario Inc. o/a Bed & Bath Boutique (Applicant) v. Swati Jenkins and, Director of Employment Standards (Respondent) (*Withdrawn*)

1086-10-ES: Ford Motor Company of Canada, Limited (Applicant) v. Virginia Swindall and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

1087-10-ES: Brenda Bishop (Applicant) v. 1719453 Ontario Inc. o/a Clean Team and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

1096-10-ES: Lawlor Enterprises o/a Tim Horton (Applicant) v. Cesar Morales and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

1208-10-ES: Daisy Mart (Applicant) v. Susan Seymour and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1230-10-ES: Colabor Limited Partnership o/a Summit Food Service Distributors (Applicant) v. Michael Neil and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1244-10-ES: Amelia Oertel (Applicant) v. Starline Agencies (Ontario) Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1246-10-ES: Darcy Ferrell (Applicant) v. Baviera Investments Inc. o/a Tim Hortons, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1251-10-ES: Gail Moore (Applicant) v. St. Alban's Boys' and Girls' Club and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1252-10-ES: Charles (Chuck) Howell (Applicant) v. Deerbrook Marina Inc., Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1257-10-ES: Christine Masters (Applicant) v. INTERFACEFLOR Canada, Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1258-10-ES: Royal Building Supplies Ltd. (Applicant) v. Jerry Cesta and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1260-10-ES: Royal Building Supplies Ltd. (Applicant) v. Rose Fracassi and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1275-10-ES: 1732461 Ontario Inc. o/a Active Green & Ross (Applicant) v. Matthew Thomas, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1278-10-ES: Hospice Vaughan (Applicant) v. Tania Sciotto and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1334-10-ES: Travamalar Sivakumaran (Applicant) v. Lincare Ltd., Director of Employment Standards (Respondent) *(Terminated)*

1368-10-ES: Pacific Medical Technologies Inc. (Applicant) v. Cameron Holliday, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1416-10-ES: Tholos Restaurant Inc. (Applicant) v. Margaret Russell and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1425-10-ES: Linda Calderone (Applicant) v. Kristin Dove and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1440-10-ES: George Garner (Applicant) v. Carimex Auto Sales Ltd. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1448-10-ES: Reprodex Ltd. (Applicant) v. Allan Munro and, Director of Employment Standards (Respondent) *(Withdrawn)*

1529-10-ES: 4311957 Canada Inc. Chaussures Regional Shoes (Applicant) v. Alain St.Amour et, le directeur des normes d'emploi (Respondent) *(Endorsed Settlement)*

1545-10-ES: Mr. Curtis W. Preiss (Applicant) v. Finally Internet Services, Director of Employment Standards (Respondent) *(Dismissed)*

1553-10-ES: Hoops Sports Bar & Grill Canada Corp. (Applicant) v. Cecilia Garrison and, Director of Employment Standards (Respondent) *(Dismissed)*

1616-10-ES: Beresford Box Company Inc. (Applicant) v. Petar Loncar and, Director of Employment Standards (Respondent) *(Dismissed)*

1622-10-ES: Bill Belovari (Applicant) v. Susanne Piva, Director of Employment Standards (Respondent) *(Terminated)*

1632-10-ES: Khalid Mughal, a director of 6747566 Canada Limited o/a Moe's Southwest Grill (Applicant) v. Alexander J. Lazarc and, Director of Employment Standards (Respondent) *(Terminated)*

1643-10-ES: Justin L. Muise (Applicant) v. Director of Employment Standards (Respondent) *(Terminated)*

1646-10-ES: Christine Gagnon (Applicant) v. Albert Auxiliary Services Ltd. et, le directeur des normes d'emploi (Respondent) *(Withdrawn)*

1704-10-ES: Myrtle George (Applicant) v. Aditya Birla Minacs Worldwide Inc. o/a Aditya Birla Minacs and, Director of Employment Standards (Respondent) *(Terminated)*

1743-10-ES: Waterstone Estate & Farms Inc. operating as Waterstone Estate & Farms (Applicant) v. Director of Employment Standards (Respondent) *(Dismissed)*

1880-10-ES: La Mode Hair Studio Inc. (Applicant) v. Director of Employment Standards (Respondent) *(Terminated)*

2036-10-ES: Lisa Williams (Applicant) v. Vision Investigation and Security Services Ltd. and, Director of Employment Standards (Respondent) *(Dismissed)*

APPEALS OCCUPATIONAL HEALTH AND SAFETY ACT

3655-06-HS: Hydro One Networks Inc. (Applicant) v. Power Workers' Union, Peter Martin, Inspector (Respondent) *(Withdrawn)*

1540-08-HS: Home Depot of Canada Inc. (Applicant) v. The Associates at Home Depot and, Carl Broughton, Inspector (Respondent) *(Withdrawn)*

3050-09-HS: Mr. Tom Balazs (Applicant) v. Ontario Public Service Employees Union and, Toronto West Detention Centre and, Neil Martin, Inspector (Respondent) *(Withdrawn)*

3692-09-HS: Metro West Detention Centre (Applicant) v. Ontario Public Service Employees Union, Local 517 and, Joe Zaher, Inspector (Respondent) *(Withdrawn)*

0518-10-HS: Steven De Prophetis (Applicant) v. The Crown in Right of Ontario (as represented by the Ministry of Labour), John Pierroz, Inspector (Respondent) *(Dismissed)*

0644-10-HS: Trevor Schwan (Applicant) v. The Corp of the City of Pembroke (Respondent) *(Withdrawn)*

PAY EQUITY ACT

0781-08-PE; 0782-08-PE; 2851-08-PE; 2871-08-PE: Ontario Secondary School Teachers' Federation representing the PSSP Bargaining Unit (Applicant) v. Hamilton-Wentworth District School Board (Respondent); Ontario Secondary School Teachers' Federation (representing the ESL Instructors Bargaining Unit) (Applicant) v. Hamilton-Wentworth District School Board (Respondent); Hamilton-Wentworth District School Board (Re: the P.S.S.P. Bargaining Unit) (Applicant) v. Ontario Secondary School Teachers' Federation (Respondent) (*Terminated*); Hamilton-Wentworth District School Board (Re: the E.S.L. Bargaining Unit) (Applicant) v. Ontario Secondary School Teachers' Federation (Respondent) (*Terminated*)

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

3622-07-R; 3625-07-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Lewis Builds Corporation, DLB Construction Limited (Respondent); Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. DLB Construction Limited (Respondent) (*Dismissed*)

1311-09-ES: William A. Attwood o/a Gemstones 'N Silver (Applicant) v. Jeremy Sieberer and, Director of Employment Standards (Respondent) (*Dismissed*)

1484-09-ES: Bruce Dube (Applicant) v. 737986 Ontario Limited o/a Don Mor Carstar Collision and, Director of Employment Standards (Respondent) (*Granted*)

1662-09-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. United Food and Commercial Workers International Union, Local 175 (Respondent) (*Dismissed*)

3449-09-ES: Mario S. M. Tristao (Applicant) v. RECONIT Electric Rebuilders Ltd. and, Director of Employment Standards (Respondent) (*Dismissed*)

0180-10-U: Paul W. G. Watkins (Applicant) v. Canadian Union of Public Employees and its Local 5167 (Respondent) v. City of Hamilton (Intervener) (*Dismissed*)

0958-10-R: International Brotherhood of Electrical Workers Construction Council of Ontario (Applicant) v. Michael Anthony Allsop carrying on business as Advanced Solar Solutions (Respondent) (*Dismissed*)

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